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ABSTRACT

Aiming to educate adult learners on the United States Constitution and Bill of Rights, this teachers' guide focuses on cases and controversies about individual rights which are most relevant to the lives of adults. The worktext for adult learners provides some basic background information about the development and interpretation of the Bill of Rights. A timeline is included so the reader can place events in chronological order. Teaching aids such as learning objectives for each unit, vocabulary words, a glossary, and questions and learning activities will help readers understand and experience the impact of The Bill of Rights on their daily lives. Although, the first 10 Amendments of the Bill of Rights are written out in their entirety, the focus will be on the First, the Second the Fourth, Fifth and Sixth (taken as a group); and the Fourteenth Amendments. Contains a seven-item annotated bibliography. (TSV)

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ED 412 164

Teachers' Guide

Understanding Our Basic Freedoms

The Bill of Rights in Action

A Worktext for Adult Learners

by

Kathleen Lee

Pamela Anderson

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The curriculum was piloted in a number of adult education programs in Maine: Portland's Adult Basic Learning Exchange, Biddeford, Wells, Windham, Skowhegan, Mechanic Falls and Turner. We appreciate the willingness of the directors and teachers to participate in the field test of these materials.

The project was funded by a grant from the Commission on the Bicentennial of the United States Constitution.

Introduction

The Bill of Rights, the first ten amendments to the United States Constitution, celebrated its two hundredth anniversary in 1991. The Bill of Rights continues to play a vital role in our daily lives as citizens, because it protects so many of the individual, fundamental rights we take for granted and exercise regularly. The importance of the Bill of Rights in modern American life justifies great emphasis on this document in the curriculum of schools, including adult education programs. To this end the Maine Law Related Education Program of the University of Maine School of Law has prepared a Bill of Rights curriculum which focuses on cases and controversies about individual rights which are most relevant to the lives of adults in Maine.

Law is a rich source of content and method for education at all levels. As content it deals with the fundamental principles, processes and values essential to preserving and strengthening our democratic society. Is the purpose of law to ensure order or to promote justice? How are the concepts of authority, responsibility, fairness; free speech, privacy, and due process embodied in the law and specifically in the cases decided by state and federal courts? How are laws made? How does the law protect individual rights and expect individual responsibility? These are some of the questions posed by law as content.

The methods of law require students to reason through hard questions as they confront actual social problems. Law-related education teaches students how controversial issues are managed in a democratic society. Managing controversy requires knowledge, sensitivity to personal and social values, and critical thinking skills. Law as method develops skills of analysis, reasoning, persuasion, and decision-making based on evidence. These skills are essential to civic competence and responsibility in our society.

Strategies for teaching and learning law-related content reflect the methods of law. They reinforce the importance of supporting conclusions, beliefs and decisions with reasons; of understanding others' positions; and of considering the consequences of action. Questions for discussion and student activities have been developed for use individually and in groups. We encourage you to try out these strategies to see what works with your adult learners, but also to experiment and develop your own approaches to teaching this material. We have provided a list of references and resource materials for teaching the Bill of Rights to supplement this curriculum.

A list of court cases excerpted in the student materials is provided. An edited version of the actual court opinion is included with this teachers' guide for reference. The case may be copied and handed out to the class, particularly in high school diploma classes where students can handle the text. A procedure for case analysis precedes the edited cases. This is the heart of the legal reasoning process. We encourage you to try it with your class.

Using The Worktext

The worktext for adult learners provides some basic background information about the development and interpretation of the Bill of Rights. A timeline is included so the reader can place events in chronological order. Teaching aids such as learning objectives for each unit, vocabulary words, a glossary, and questions and learning activities will help readers understand and experience the impact of the Bill of Rights on their daily lives. All the vocabulary words listed at the beginning of each chapter are defined in the glossary.

Although the first ten amendments, the Bill of Rights, are written out in their entirety, the focus will be on the First; the Second; the Fourth, Fifth and Sixth (taken as a group); and the Fourteenth Amendments. These amendments guarantee basic rights which have a great deal of relevance to adults living in Maine.

To prepare for the following chapters, it would be interesting to see what your students already know. On the following pages is a brief quiz. Ask your students to answer true or false to each question. Complete the chapters and your study and then go back and ask them to answer the questions again. Compare the two sets of answers against the answer key.

What Does the Bill of Rights Guarantee?

(Answer true or false to each question or statement.)

1. If a private company bans its employees from speaking freely, the First Amendment is violated.
2. In 1800, if the state or local police searched a person's home without a reason or a warrant, the Fourth Amendment was violated.
3. Most of the Bill of Rights applies to state and local governments today.
4. The text of the Constitution and its amendments protect the right to travel, marry and raise a family and vote.
5. Through Supreme Court decisions interpreting the Constitution and its amendments, the following rights are protected: health care, shelter, food or welfare.
6. The sources for the Bill of Rights were mainly American.
7. Freedom of speech protects a person's right to criticize the government, even if the speech embarrasses the government.
8. Freedom of speech does not allow a state to make it a crime to desecrate the American flag.
9. The drug peyote is part of an American Indian religious ceremony. The free-exercise-of-religion clause of the First Amendment is violated by a state law that does not allow the use of peyote, even during such a religious ceremony.
10. The First Amendment does not allow state colleges to expell students who make racist or sexist remarks in public.
11. Movies that are degrading to women but are not obscene may be prohibited consistent with the First Amendment.
12. A newspaper can never be stopped by the government from printing a truthful story because of the free-press clause of the First Amendment.
13. Suppose a newspaper writes a very damaging story about the mayor of a city, and the story turns out to be false. The newspaper checked out the facts carefully before printing the story. The First Amendment permits the mayor to recover damages from the newspaper for libel.

14. Hate groups such as the Ku-Klux Klan and American Nazi Party can be prohibited from marching in neighborhoods under the First Amendment.

15. If a person does not have enough money to hire a lawyer for trial, the government must provide one in both civil and criminal cases.

16. If the police find illegal drugs in the possession of a criminal suspect, but did so in violation of the Fourth Amendment, which requires a warrant or probable cause, the drugs cannot be used as evidence against him at trial.

17. If the police have probable cause to believe there are drugs in a car, they must obtain a warrant before they can search the car.

18. Stopping cars at police roadblocks to check for drunken driving, without a warrant and without any suspicion that the driver has been drinking, violates the Fourth Amendment.

19. Taking a suspect's blood by a police doctor to check for alcohol use violates the suspect's right against self-incrimination.

20. The Constitition provides only for a lawyer at criminal trials, not for pre-trial proceedings such as lineups or police questioning.

21. The Second Amendment clearly protects the right of the individual to bear arms.

22. The Bill of Rights is concerned solely with individual rights, not states' rights.

23. The government can take your property for a public purpose such as building a highway without paying for it.

24. A state can easily enact affirmative-action laws for government contracts that give preference to racial minorities to make up for past discrimination against racial minorities.

25. A student has the right to a due-process hearing before he can be suspended from public school.

What Does the Bill of Rights Guarantee?
(Answer Key)

1. *False.* The Bill of Rights restricts only the power of government, not individuals or corporations.

2. *False.* The Bill of Rights restricted only the power of the United , not the states or local governments.

3. *True.* After the 14th Amendment was ratified in 1868, the U.S. Supreme Court interpreted the due-process clause of the 14th Amendment to apply most of the Bill of Rights to state and local governments.

4. *False.* The Constitution does not explicitly protect the right to travel or the right to marry and raise a family, but these rights have been protected by Supreme Court decisions.

5. *False.* Neither the Constitution nor court decisions interpreting the Constitution or its amendments guarantees health care, shelter, food or welfare.

6. *False.* The English sources for the Bill of Rights include Magna Carta, the English Bill of Rights, and English political philosophers Thomas Hobbes and John Locke. In addition state bills of rights and the U.S. Declaration of Independence also were sources for the Bill of Rights.

7. *True.* Only if the speech would cause immediate, unlawful acts could the speech-giver be punished.

8. *True.* The Supreme Court has said such conduct is protected speech.

9. *False.* The Supreme Court has held that a general criminal law can prohibit the use of peyote, even during a genuine religious ceremony.

10. *True.* Although such conduct may be highly offensive, the First Amendment permits offensive speech so long as it is not considered "fighting words" or an incitement to unlawful conduct.

11. *False.* Only obscene movies are unprotected by the First Amendment.

12. *False.* In a very narrow category of cases, where the national security of the United States is at stake, newspapers can be prohibited by courts from publishing a story. An example would be a story that disclosed the exact time at which the Air Force planned to attack an enemy target during wartime.

13. *False.* The newspaper is protected by the First Amendment in such situations in which it was careful but wrong. Only if the newspaper knew the story was false, or was very careless in printing the story without bothering to check out the facts, could it be found guilty of libel.

14. *False.* Peaceful demonstrations are protected under the First Amendment, even for groups preaching hate.

15. *False.* Under the Sixth Amendment, a person accused of a crime is entitled to free counsel when the punishment imposed may be imprisonment. There is no constitutional requirement for free counsel in civil cases.

16. *True.* This is known as the exclusionary rule.

17. *False.* Although warrants are needed to search a home, there is an exception when there is probable cause to search a movable vehicle. There is less expectation of privacy in the car and thecar could be moved while a warrant was sought.

18. *False.* The Supreme Court has held that even though stopping the car is a seizure, it is not unreasonable to do so. Given the grave problem of drunken driving, it is considered a minor inconvenience to innocent drivers to be briefly stopped and checked for intoxication.

19. *False.* The self-incrimination of the Fifth Amendment prevents only compelled testimony. Blood samples are physical evidence, not testimonial.

20. *False.* The famous Miranda decision requires free counsel for criminal suspects who are questioned while in police custody, and other decisions require counsel to be present at lineups after the prosecutor has gotten into the case.

21. *False.* As held by the Supreme Court in 1939, the amendment refers to the need for state militias as the reason for people to keep and bear arms. Some opponents of gun control, however, argue that the amendment does grant individuals the right.

22. *False.* The Tenth Amendment is the states' rights amendment, which prevents the United States from infringing on state sovereignty.

23. *False.* The Fifth Amendment says that private property cannot be taken for public use without just compensation.

24. *False.* Affirmative-action laws will be held to violate equal protection unless it can be shown by clear proof that the state has discriminated against minorities in the past.

25. *True.* The Supreme Court has required the hearing, which may be very informal, including notice of the hearing and a right of the student to tell his/her story to the principal.

Chapter One
Bill of Rights - An Overview

Student Activities

Brainstorm with students a list of rights they have as Americans. List the rights on the board. As you list them, discuss which rights are in fact guaranteed and which are not.

Get a copy of the Maine constitution. **

Have the students find the rights guaranteed in the Maine constitution.

Do this as a large group activity with the teacher leading the search. (Students may need some assistance interpreting the language.)

During the discussion determine if the state guarantees more rights than the federal government and if those rights are listed separately or as part of the Constitution.

** Copies of the Maine Constitution may be obtained free of charge from:

Bureau of Elections
State House Station 101
Augusta, Maine 04333
289-4186

(allow 6 weeks to fill orders)

Chapter Two

Our Constitution - An Outline for a Government

Student Activities

Compare how the state government is set up with how the federal government is set up.

Discuss the checks and balances present in state government as compared to the federal government.

Compare the court systems at the state and federal levels.

Arrange a visit to the Maine Supreme Judicial Court.

If possible, try to see a case being heard.

Find out which case is being heard and gather some information for the class before the field trip.

Chapter Three
From Revolution to Rights

Student Activities

If you are working with one student or a small group, you may have to adapt these activities somewhat.

Have each student write a definition of the word "right."

Divide into small groups of two or three (by counting off so groups are varied) and have students share their definitions of "right." Each group should come to consensus about a definition. There should be a recorder/reporter for each group.

Bring the large group together and have the reporter from each group write their definition on the board.

Discuss the definitions — look for similarities and differences. Come to consensus with the large group on one definition for "right."

Discuss the difference between legal and natural rights. Include in the definition where the rights come from.

Find articles from newspapers or magazines about Supreme Court cases dealing with rights. (The teacher may want to collect articles as they appear and save them from year to year.)

Hand out the articles or copy one and have students discuss the rights under question.

Have students write a summary of the case or of the majority opinion if there is enough information.

Chapter Four
First Amendment

Student Activities

Have students respond to the following situations. They can either write or hold a discussion about them.

Ku Klux Klan members, dressed in costume, hold a rally in a mall parking lot. They hand out informational leaflets, chant their slogans and talk with the bystanders. Can the police stop them?

An author writes an unauthorized biography about a famous person. The person is depicted in very unflattering terms. Critics of the book say that many of the characterizations are not based on supporting evidence. Does an author have the right to express his or her opinion about a public figure even if the biographer's facts may be inaccurate?

A young woman is allegedly raped by a well-known person. Her name and picture are published in the paper. Does this woman have a right to privacy or does freedom of the press take precedence?

Do the controversial issue continuum activity (see next page). Use one of the cases in the student book.

Controversial Issue Continuum

Purpose: To consider the polar positions of a controversial issue underlying a Bill of Rights case and to examine the alternative positions and their consequences on society as a whole and on individuals.

Procedure:

1. Select an issue that has opposing viewpoints, such as whether flagburning should receive Constitutional protection as free speech or be prohibited by an amendment.
2. Describe the issue in enough detail so that the opposite positions are clearly understood. Draw a continuum line on the board and write brief descriptions of possible positions along the continuum. Use the facts of an actual controversy or hypothetical examples based on interpretations of the Bill of Rights. Have students consider where they would be.
3. Ask students to individually write their position on the issue and list the two most compelling reasons why they believe as they do. Have the students stand at the position on the continuum where they believe their position on the issue falls.
4. Ask students to clarify or explain (not defend or give reasons) their positions and why they chose to stand where they did. As they listen to each other, students may change their positions.
5. Let students give their reasons for placing themselves where they did.
6. To get students to listen to and consider opposing points of view, have them present the arguments that give them pause, make them think twice, get under their skin or are the most persuasive even though it is contrary to their position.
7. Change the facts of the situation to clarify students' underlying values around the issue. Use hypotheticals to see if students move along the continuum as significant facts change.
8. Finally, have students consider the consequences of alternative policy choices. Identify the existing law or policy on the issue. Have the class discuss what impact the opposite positions presented on the continuum would have on society as a whole and on individuals.

Chapter Five
Second Amendment

Student Activities

Using the following questions, develop an argument for or against an individual's right to bear arms:

Why is your stand important?

What arguments do you have to support your side?

What evidence do you have to support your arguments?

What are the benefits or advantages for your stand?

Is there a compromise you could make on your stand so that it would be agreeable to more people?

How will you generate support for your position so it will eventually be approved?

Polar meter or continuum: (See outline of Controversial Issue Continuum in previous chapter.)

Have students line up according to their positions on this issue.

They must explain their positions and try to convince each other to change or move in the line.

Chapter Six
Fourth, Fifth, Sixth Amendments

Student Activities

Have a police officer, lawyer or judge come in and talk with the class about search warrants and affidavits.

Using the sample search warrant and affidavit which follow, have students discuss the following questions:

What is an affidavit?

What does the police officer swear to the judge to get the search warrant?

Describe the person or place to be searched and the particular things to be seized.

What facts justify the warrant?

Who must sign the search warrant?

If any property is taken, what must be done with it?

What Bill of Rights amendment covers this — what rights are protected?

Have students develop guidelines police should follow for interrogations. They must keep in mind the Miranda decision and consider:

Length of questioning

Types of questions

What officers personally believe

What is interrogation? Does it require questions?

Suspect's state of body or mind

Information known to police

STATE OF MAINE

Cumberland, ss.

DISTRICT COURT
DISTRICT NUMBER Nine
DIVISION OF Southern Cumberland

SEARCH WARRANT

TO: Any officer authorized by law to execute this search warrant

On the basis of the application and:

[XX] Affidavit(s) by Det. Daniel Young, Portland Police Dept., dated September 19th, 19 85, which affidavits are attached to the original hereof that is filed with the District Court;

[ ] Evidence given under oath/affirmation by _____ on _____, 19___, which testimony was recorded on tape no._____.

I am satisfied that there is probable cause to believe that there are grounds for the issuance of a search warrant. You are therefore commanded to search the place or person described below for the property also described below and, if the property be found, to seize such property and prepare a written inventory of the property seized.

Place or person to be searched:

The apartment of J. Dean at 259 Oxford St., said building being a 3-story wood structure, yellow in color.

Property or articles to be searched for:

Eleven stolen computers as follows: 117537, 103810, 0039188, 0045664, 106558, 0084024, 0017172, 106286, 092853, 0046425, 007369

Name of owner or occupant of premises, if known to affiant:

Jack Dean

Appendix i

Delete Section Not Applicable	Daytime Only	This warrant shall be executed between the hours of 7:00 A.M. and 7:00 P.M.
	Nighttime or Daytime	For reasonable cause shown in the affidavit, this warrant may be executed either in the daytime or the nighttime.

This warrant shall be returned together with a written inventory, within 10 days of the issuance hereof, to the District Court, the District Division of Cumberland.

Issued at Portland in the county of Cumberland this 19th day of September, 19 85.

Harriet P. Harris
District Judge/Complaint Justice

RECEIPT FOR PROPERTY SEIZED, INVENTORY

Pursuant to this warrant I searched the place or person described and I make a receipt for and an inventory of the property seized:

The inventory was made in the presence of

☐ a person from whose possession or premises the property was seized, namely _____.

☐ another credible person (other than applicant for warrant), namely _____.

Date of seizure:

_____
Authorized Officer

VERIFICATION OF INVENTORY

The above-named _____ made oath/affirmation that the above inventory is correct before me this _____ day of _____, 19___.

_____
Clerk of Courts/Notary Public

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APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

TO: Harriet P. Henry : Judge of the District Court, Complaint Justice

I, Det. Daniel Young, a law enforcement officer for the Portland Police Department, Cumberland County, State of Maine, apply for a search warrant to search the premises, vehicle, place or other property or place listed below and to seize the property or other articles also listed below.

Place or person to be searched: The apartment of J. Dean located at 259 Oxford Street.

Location (with buildings include apartment or room no.) Located in the basement of 259 Oxford St., Portland

Owner/occupant, if known Jack Dean

Description:

[XX] Building a yellow 3-story wood structure with red brick basement walls

[ ] Vehicle

[ ] Other place

[ ] Person

Property or articles to be seized (describe):

[ ] Contraband (including drugs)

[XX] Stolen property 11 Computers taken in a burglary in Exeter, NH

[ ] Physical evidence or instrumentality of crime

[ ] Identification evidence from person

Under oath/affirmation, I state that the above information is true and that I have probable cause to conduct the requested search and seizure on the basis of

[XX] my statement, dated 09/19/85

[ ] the statement of _____ dated / /

attached to this page as pages 2 - ____ of this application and affidavit

page 1 of 5 Date: 9/19/85 Initials: DLY Place this notation on each subsequent page.

AFFIDAVIT

I, Det. Daniel L. Young, a police officer for the City of Portland, a deputy sheriff for the County of Cumberland in the State of Maine, being duly sworn, do hereby state and depose;

On Thursday, Sept. 19, 1985 I, Det. Daniel Young, received a telephone call from a confidential informant. This informant advised that he/she observed approx. 10-15 computers in the basement apartment located at 259 Oxford Street. The computers are described as beige in color with a keyboard and a viewing screen. The informant observed the computers at approximately 8:30 a.m. this date and was told that Jack Dean was attempting to sell the computers for $300.00 each.

The informant also advised he was told by Dean that he and a friend broke into a school in New Hampshire. The exact town was not known, however, the estimated travel time to the location of the burglary was 1 1/2 hours. The informant also stated that the vehicle used by Dean and his friend was a Ford LTD with a new Maine registration. The computers were located at 8:30 a.m. this morning in two separate rooms in the apartment belonging to Dean. The informant also advised that the janitor at the school had helped set up the burglary and had given a master key to Dean.

This informant has proven reliable in the past. He/she has provided information which has allowed me to recover stolen goods with a search warrant on two separate occasions, within the last 3 years.

On September 19, 1985, I spoke by telephone to Jim Valiget, a detective with the Exeter, New Hampshire Police Department. He told me that the Main

9/19/85 DLY

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Street Elementary School in Exeter was broken into on September 16, 1985 at 8:20 p.m., and a large amount of computers were stolen, having a value of more than one thousand dollars. He told me that an Exeter police officer observed a Ford LTD motor vehicle with Maine license plate 6840K near the school minutes before the burglary. He told me that he questioned the school janitor, a Robert Presby, whose wallet contained a telephone number - "207-772-0791." The serial numbers of the stolen computers include:

117537	103810	0039188
0045664	106558	0084024
0017172	106286	092853
0046425	007369	

On September 19, 1985, I checked the city's reverse telephone number directory and determined that "207-772-0791" is listed to Elizabeth Dean known by me to be the mother of Jack Dean . I also checked with the Maine Department of Motor Vehicles and determined that "6840K" is listed to Robert Walls of Portland, known to me to be a friend of Jack Dean.

On September 19, 1985, I drove by the structure at 259 Oxford Street, known by me to be the residence of Jack Dean. I describe the building as a 3-story wooden structure, yellow in color, with a red brick foundation and basement apartment.

WHEREFORE, I have probable cause to believe that the crime of Theft by Receiving has taken place and that evidence of this crime exists in a basement apartment of a structure located at 259 Oxford Street, Portland, I request a search warrant for the following items:

9/19/85 DLY

1. Computer equipment, serial numbers: 117537 103810
   0039186 0045664
   106558 0084024
   0017172 106286
   092853 0046425
   007369

2. Any other physical evidence or instrumentality of the crime of Theft by Receiving.

Daniel L. Young

Sworn and subscribed before me this 19th day of September, 1985

Harriet O. Henry
Judge Dist. Ct.

9/19/85 DLY

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☐ I request that a search warrant be issued which may be executed during the daytime (7 A.M. to 7 P.M.)

☒ I request that a search warrant be issued which may be executed either during the daytime or nighttime. In support thereof, under oath/affirmation, I state that the following grounds are reasonable cause for allowing the search warrant to be executed during the nighttime hours (7 P.M. to 7 A.M.):

☐ The property to be seized, contraband drugs, is subject to rapid sale. Loss of the evidence may impair any criminal prosecution. Distribution of the drugs is detrimental to the public health and safety.

☐ The property to be seized, computers (11) is of a type that is readily removable and likely to be moved quickly or destroyed. Loss of the evidence may impair any criminal prosecution.

☐ Other _____

_____

_____

Det. Daniel S. Young

Subscribed and sworn by Det D. Young. before me this 19th day of September, 1985.

Harriet P. Heavy
Judge Dist. Ct.

Chapter Seven
Fourteenth Amendment

Student Activities

If there is only one student or a small group, have students repond to selected problems either orally or in writing.

If there are enough students, divide the class into small groups.

Give each group one problem.

The group is to discuss the problem and decide on a course of action for the people involved.

In making their decision they should consider whether any civil or human rights are being violated. They should also discuss where the people would go for assistance to solve the problem.

1. Susan Lane and Bob Smith have both applied for a job as a secretary. Both applicants have the same education and work experience. Bob gets the job. (Rumor has it that he got the job because he has a family to support and she was a single person.) After he is in the job for a while, the title is changed to Administrative Assistant and the salary is raised by $2000 per year. Soon afterwards the secretary's position is advertised again. Susan applies and gets the job. After she is on the job for awhile, she realizes that both she and Bob are doing the same job, except that he has a different title and gets more money. Can she do anything about this situation?
2. Several people apply for a very competitive and lucrative computer technology position with a company that has an equal hiring policy.
    - One of the applicants is disabled and uses a wheelchair. This applicant has the most extensive computer background and knowledge in the required field. (At this point in time the company is not handicapped accessible.)
    - Another applicant is a woman who has just completed her education in the computer field and comes highly recommended by her college.
    - Another applicant is not a native English speaker, but has the essential education and job experience.
    - The fourth applicant, a man aged 56, has the education and practical experience from many years on the job.

Which of these candidates would you hire? Why? Why would you not chose the others? Would any of them have recourse to sue you for not hiring them?

3. In your workplace everytime you walk into the staff lounge, the other employees are telling "off-color" jokes or passing around lewd pictures. It makes you feel extremely uncomfortable. You mention this to your boss and the boss says that they don't mean anything by it and the comments are not directed at you. The group continues to behave in this way forcing you to find another place to relax. What else can you do about this problem? Where would you go first?

Extra Follow-up Activities

Give each student a copy of Rights and Freedoms. Either individually or in groups, ask students to rank order the eight most important items to them personally on this list.

Also give each student the questions to respond to in writing.

When they are done, hold a discussion based on their responses.

Have students compare civil liberties in the United States with civil liberties in other countries. If you have students from other countries in your class, discuss what liberties or freedoms they had. Compare those with the freedoms in the United States. If you do not have students from other countries, assign countries to the class and discuss.

Plan a day without the Bill of Rights. What would it look like? How would it be different from any other day?

As a follow-up activity at the close of the unit, have students write a brief essay on what their life might be like without the protection of the Bill of Rights. Share the student essays in class, especially if you have students from other countries who have a way to compare two different life styles.

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Rights and Freedoms

_____freedom of religion

_____right to fair and speedy jury trial

_____freedom of speech

_____cannot be made to testify against yourself

_____guarantee against unreasonable searches and seizures

_____freedom of assembly

_____right to keep and bear arms

_____right to be compensated for private property taken for public use

_____freedom to petition the government

_____cannot be deprived of life, liberty, and property without due process of law

_____probable cause necessary if a search warrant

_____right to indictment by a grand jury before being made to answer for a capital crime

_____cannot be tried twice for the same crime (double jeopardy)

_____freedom of the press

_____right to be confronted by the witnesses against him/her

_____right to counsel or legal representation

_____equal protection of the laws

Questions about Rights and Freedoms

(Respond in writing to each one.)

Is one of your top eight very important to you? Which one? Why?

Which of remaining ones that you did not choose was most difficult to give up? Why? Which was the easiest? Why?

Write a paragraph on why you chose the rights and freedoms you did. Describe what made your decision-making process easy or difficult for you.

Case Analysis

Purpose: The case analysis method is an inquiry-oriented technique. It is designed to help students apply legal theory to real-life situations, such as actual court cases, hypothetical situations involving some conflict or dilemma, and situations drawn from newspapers, magazines, books, or videos. The cases in this curriculum provide many opportunities for case analysis.

Procedure:

1. Select the case and present it to the students, by handing out an edited case from these materials or from another source. All or parts of the case may be handed out initially; for example, the court's decision may be withheld until later in the discussion.

2. Have the students review the facts of the case. The facts serve as the basis for classroom discussion. The inquiry process should be started by carefully reviewing and clarifying all of the facts. Students can be asked:

   - What happened in this case?
   - Who are the parties?
   - What facts are important? Unimportant?
   - Is any significant information missing?
   - Why did the people involved act the way they did?
   - How did the lower courts rule on this case (if the case is on appellate review)?

3. Help the students frame the issue or issues in the case. The legal issue is the question of law on which the resolution of the case turns. An issue should be posed in the form of a question. For example, in Texas v. Johnson, the issue might be framed: Is burning the American flag a form of expression protected by the First Amendment?

4. Discuss the arguments on both sides of the controversy. When discussing the arguments students should consider such questions as:

- What are the arguments in favor of and against each point of view?
- Which arguments are most persuasive? Least persuasive? Why?
- What might be the consequences of each course of action? To the parties? To society?
- Are there any alternatives?

In discussing the various arguments it is important to foster a climate of acceptance and openness. Students should be encouraged to listen to, consider, and evaluate all points of view.

5. Ask students to reach a decision, or answer to the issue posed by the case. Try to reach a class consensus after careful consideration of the facts, issue, and arguments. There may be a minority view. Students should be asked for the reasons behind their decision. Then compare the class decision to the actual decision of the court.

When students are given the court's decision, they should be asked to evaluate it. Do they agree or disagree? What will the decision mean for the parties? For society?

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Case text in italics indicates that we have inserted our language in place of the Court's language for ease in reading.

*** Indicates that a significant portion of the Court's language has been omitted.

. . . Indicates that portons of a sentence or paragraph have been omitted.

Texas v. Johnson
491 U.S. 397 (1989)

BRENNAN, J., joined by Justices Marshall, Blackmun, and Scalia. Justice Kennedy concurred separately. Chief Justice Rehnquist and Justices Stevens, White, and O'Connor dissented.

After publicly burning an American flag as a means of political protest, Gregory Lee Johnson was convicted of desecrating a flag in violation of Texas law. This case presents the question whether his conviction is consistent with the First Amendment. We hold that it is not.

During the Republican National Convention in Dallas in 1984, Johnson and other demonstrators marched, made speeches, and held a "die-in" against Reagan administration policies. An American flag was ripped from a flag pole and given to Johnson, who soaked it in kerosene and set it on fire. While the flag burned, the protesters chanted, "America the red, white, and blue, we spit on you." *Afterwards, someone took the remains of the flag and buried them in his backyard. No one was hurt or threatened, although many onlookers were offended by what Johnson did.*

...The First Amendment literally forbids the abridgement of "speech," but we have long recognized that its protection does not end at the spoken or written word.... In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether "an intent to convey a particularized message was present, and whether the likelihood was great that the message would be understood by those who viewed it." ...Especially pertinent to this case are our decisions recognizing the communicative nature of conduct relating to flags. Attaching a peace sign to the flag..., saluting the flag..., and displaying a red flag..., we have held, all may find shelter under the First Amendment.

...Johnson burned an American flag as part - indeed as the culmination - of a political demonstration.... At his trial, Johnson explained his reasons for burning the flag as follows: "The American flag was burned as Ronald Reagan was being renominated as President. And a more powerful statement of symbolic speech, whether you agree with it or not, couldn't have been made at that time. It's quite a juxtaposition. We had new patriotism and no patriotism."

The government may have a legitimate interest that allows it to limit such speech. ...*Texas* offers two separate interests to justify this conviction: preventing breaches of the peace and preserving the flag as a symbol of nationhood and national unity. We hold that the first interest is not implicated on this record and that the second is related to the suppression of expression. *Here, no riots took place. Johnson's conduct did not amount to "fighting words."* ...No reasonable onlooker *would have considered his actions* as a direct personal insult *and an invitation to fight*.

...The Texas law is not aimed at protecting...the flag in all circumstances, *only when damaging it* would cause serious offense to others. ...According to Texas, if one

physically treats the flag in a way that would tend to cast doubt on *national unity*, the message...is a harmful one and therefore may be prohibited.

If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. We have not recognized an exception to this principle even where our flag is involved.... Texas attempts to convince us that even if its interest in preserving the flag's symbolic role does not allow it to prohibit words or expressive conduct critical of the flag, it does permit it to forbid the outright destruction of the flag. *But if we agree with Texas, then the flag could only be used to express one, positive, viewpoint.* ...Could the Government, on this theory, prohibit the burning of state flags? Of copies of the Presidential seal? Of the Constitution? .... To do so, we would be forced to impose our own political preferences on the citizenry, *as* the First Amendment forbids us to do.

...To say that the Government has an interest in encouraging proper treatment of the flag is not to say that it may criminally punish a person for burning a flag as a means of political protest.... The way to preserve the flag's special role is not to punish those who feel differently.... It is to persuade them that they are wrong.... We can imagine no more appropriate response to burning a flag than waving one's own... . We do not consecrate the flag by punishing its desecration, for in doing so we *would* dilute the freedom that this cherished emblem represents.

KENNEDY, J. concurring:

...It is poignant but fundamental that the flag protects those who hold it in contempt.

REHNQUIST, C.J., joined by Justices White and O'Connor, dissenting. Justice Stevens dissented separately.

For more than 200 years, the American flag has occupied a unique position as the symbol of our Nation, a uniqueness that justifies a governmental prohibition against flag burning in the way respondent Johnson did here. *(The Chief Justice quotes at length from Emerson's "Concord Hymn," Key's "The Star Spangled Banner," and Whittier's "Barbara Frietchie.")*.... The flag symbolizes the Nation in peace as well as in war.... No other American symbol has been as universally honored as the flag. *Federal law, as well as all but two states (Alaska and Wyoming) prohibit the burning of the flag.*

...The right of free speech is not absolute at all times and under all circumstances.... *Laws may prohibit* the lewd and the obscene, the profane, the libelous, and the insulting or 'fighting' words.

...Here Johnson was free to make any verbal denunciation of the flag that he wished.... *His* public burning of the flag obviously did convey Johnson's bitter dislike of this country, *but it was unnecessary. He still had* a full panoply of other symbols *that he could have destroyed* and every conceivable form of verbal expression to express his deep disapproval of national policy.

...Surely one of the high purposes of a democratic society is to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people, whether it be murder, embezzlement, pollution, or flag-burning.... The government may conscript men into the Armed Forces where they must fight and perhaps die for the flag, but the government may not prohibit the public burning of the banner under which they fight.

Justice STEVENS, dissenting.

A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize its society. The message conveyed by some flags - the swastika, for example - may *outlast the government they represent*. So it is with the American flag. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

Here, respondent was prosecuted because of the method he chose to express his dissatisfaction with *the policies of the Reagan administration*. Had he chosen to spray paint...on the Lincoln Memorial, *the Government could forbid or prosecute his expression*. ....The same interest supports a prohibition on the desecration of the American flag.

United States v. Eichman
496 U.S. 287 (1990)

BRENNAN, J., joined by Justices Marshall, Blackmun, Scalia, and Kennedy. STEVENS, J., dissented, joined by Chief Justice Rehnquist and Justices White and O'Connor.

***

The Government concedes in this case, as it must, that appellees' flag-burning constituted expressive conduct..., but invites us to reconsider our rejection in Johnson of the claim that flag-burning as a mode of expression, like obscenity or "fighting words," does not enjoy the full protection of the First Amendment.... This we decline to do... .

The Government contends that the Flag Protection Act is constitutional because, unlike the statute addressed in Johnson, the Act does not target expressive conduct on the basis of the content of its message. The Government asserts an interest in protecting the physical integrity of the flag under all circumstances, in order to safeguard the flag's identity "as the unique and unalloyed symbol of the Nation."...

Although the Flag Protection Act contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted interest is "related to the suppression of free expression"...and concerned with the content of such expression. The Government's interest in protecting the physical integrity of a privately owned flag rests upon a perceived need to preserve the flag's status as a symbol of our Nation and certain national ideals...and is implicated only when a person's treatment of the flag communicates a message to others that is inconsistent with those ideals.

***

...We decline the Government's invitation to reassess this conclusion in light of Congress' recent recognition of a purported "national consensus" favoring a prohibition on flag-burning. Even assuming such a consensus exists, any suggestion that the Government's interest in suppressing speech becomes more weighty as popular opposition to that speech grows is foreign to the First Amendment.

...Government may create national symbols, promote them, and encourage their respectful treatment. But the Flag Protection Act goes well beyond this by criminally proscribing expressive conduct because of its likely communicative impact.

...Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering. The judgments are Affirmed.

STEVENS, J., joined by Chief Justice Rehnquist, and Justices White and O'Connor, dissenting.

The Court's opinion ends where proper analysis of the issue should begin. Of course "the Government may not prohibit the expression of an idea, simply because

society finds the idea itself offensive or disagreeable." None of us disagrees with that proposition. But it is equally well settled that certain methods of expression may be prohibited if (a) the prohibition is supported by a legitimate societal interest that is unrelated to suppression of the ideas the speaker desires to express; (b) the prohibition does not entail any interference with the speaker's freedom to express those ideas by other means; and (c) the interest in allowing the speaker complete freedom of choice among alternative methods of expression is less important than the societal interest suggesting the prohibition.

...The first question the Court should consider is whether the interest in preserving the value of that symbol is unrelated to suppression of the ideas that flag burners are trying to express... . The Government's legitimate interest in preserving the symbolic value of the flag is, however, essentially the same regardless of which of many different ideas may have motivated a particular act of flag burning.

...Thus, the Government may - indeed, it should - protect the symbolic value of the flag without regard to the specific content of the flag burners' speech. The prosecution in this case does not depend upon the object of the defendants' protest. It is, moreover, equally clear that the prohibition does not entail any interference with the speaker's freedom to express his or her ideas by other means....

This case, therefore, comes down to a question of judgment. Does the admittedly important interest in allowing every speaker to choose the method of expressing his or her ideas that he or she deems most effective and appropriate outweigh the societal interest in preserving the symbolic value of the flag?

***

The symbolic value of the American flag is not the same today as it was yesterday... . Moreover, the integrity of the symbol has been compromised by those leaders who seem to advocate compulsory worship of the flag even by individuals whom it offends, or who seem to manipulate the symbol of national purpose into a pretext for partisan dispute about meaner ends. ...Simply dissenting without opinion would not honestly reflect my considered judgment concerning the relative importance of the conflicting interests that are at stake.

Accordingly, I respectfully dissent.

Sheck v. Baileyville School Committee
530 F.Supp. 679 (D. Maine 1982)

CYR, District Judge.

***

More than a decade ago the Supreme Court handed down its landmark decision...recognizing that secondary school students "may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." Book bans do not directly restrict the readers' right to initiate expression but rather their right to receive information and ideas, the indispensable reciprocal of any meaningful right of expression...Courts recognizing a constitutional right to receive information emphasize the inherent societal importance of fostering the free dissemination of knowledge and ideas in a democratic society. ...

...The right to receive information and ideas is nowhere more vital than in our schools and universities. ...Secondary school libraries are forums for silent speech. ...Public schools are major marketplaces of ideas, and First Amendment rights must be accorded all persons in the market for ideas, including secondary school students...

.

The School Committee argued that they did not ban 365 Days because of its content. In fact, the school library continued to carry books that described what the fighting in Vietnam was all about and books both for and against the war. They argued that the First Amendment prohibits the government from regulating the content of speech, but, in the school environment, it should not be read to prohibit actions which regulate simply the speakers' choice of words.

The social value of...censored expression is not to be sacrificed to arbitrary official standards of *taste in vocabulary*.... As long as words convey ideas, federal courts must remain on First Amendment alert in book banning cases, even those ostensibly based on vocabulary considerations. A less vigilant rule would leave the care of the flock to the fox that is only after their feathers.

On the other hand, an appropriate balance...must be struck among the traditional rights of parents in the rearing of their own children..., the power of the state to control public schools..., and individual rights of free expression. In the context of public school education considerable deference must be accorded parents and local school authorities in determining the effect upon students of exposure to reading material. ...The court would be *reluctant*... to rule out an appropriate parental role in prescribing standards of taste in the reading materials to which one's own children may be exposed in the extracurricular environment of the school library...

On the other hand, a book may not be banned from a public school library in disregard of the requirements of the Fourteenth Amendment. ...First Amendment free speech is a fundamental individual liberty which no state may withhold without due process *which is protected by the Fourteenth Amendment.*

...In order to avoid chilling legitimate speech...governmental regulation of free speech...must be limited by reasonably precise...standards. ...*At the very least,* the Fourteenth Amendment...mandates that governmental units adhere to their own rules and regulations... .

***

Here, the Committee appears to have considered the challenge to 365 Days on the basis of the subjective standards of its individual members... . *The book may be objectionable for some but not all students.* The criteria to be considered in advance of state action restricting student access to objectionable language include the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the content and manner of presentation. ...There is no evidence that the Committee has accorded appropriate consideration to these criteria. The ban was imposed without regard to the age and sophistication of students. It is difficult to understand how at least two members of the Committee, who have not read the book, could have given fair consideration to its content. *The Court orders the book returned until it is given fair consideration under the Challenged Materials Policy, considering the criteria the Court has specified.*

Skokie v. National Socialist Party of America
69 Ill. 2d 597 (1978)

PER CURIAM. Clark, J. dissented.

Plaintiff, the village of Skokie, filed a complaint in the circuit court of Cook County seeking to enjoin defendants, the National Socialist Party of America (the American Nazi Party) ... from engaging in certain activities while conducting a demonstration within the village. The circuit court issued an order enjoining certain conduct during the planned demonstration. ...

*D*efendants are enjoined from "intentionally displaying the swastika on or off their persons, in the course of a demonstration, march , or parade." ...

In an affidavit defendant Frank Collin, who testified that he was a "party leader," stated that ... he sent officials of the plaintiff village a letter stating that the party members and supporters would hold a peacable, public assembly in the village .... The demonstration was to begin at 3 p.m., last 20 to 30 minutes, and consist of 30 to 50 demonstrators marching in single file, back and forth, in front of the village hall. The marchers were to wear uniforms which include a swastika emblem or armband. They were to carry a party banner containing a swastika emblem and signs containing such statements as "White Free Speech," Free Speech for the White Man," and "Free Speech for White America." The demonstrators would not distribute handbills, make any derogatory statements directed to any ethnic or religious group, or obstruct traffic. They would cooperate with any reasonable police instructions or requests.

... A resident of Skokie testified *at the hearing* that he was a survivor of the Nazi holocaust. He further testified that the Jewish community in and around Skokie feels the purpose of the march in the "heart of the Jewish population" is to remind the two million survivors "that we are not through with you" and to show "that the Nazi threat is not over, it can happen again." Another resident of Skokie testified that as the result of the defendants' announced intention to march in Skokie, 15 to 18 Jewish organizations, within the village and surrounding area, were called and a counterdemonstration of an estimated 12,000 to 15,000 people was scheduled for the same day. There was opinion evidence that the defendants' planned demonstration in Skokie would result in violence.

***

The ... issue ... before this court is whether the circuit court order enjoining defendants from displaying the swastika violates the first amendment rights of those defendants.

In defining the constitutional rights of the parties who come before this court, we are, of course bound by the pronouncements of the United States Supreme Court in its interpretaion of the United States Constitution. ...The decisions of that court, ... in our

opinion compel us to permit the demonstration as proposed, including display of the swastika.

... *I* t is entirely clear that the wearing of distinctive clothing can be symbolic expression of a thought or philosophy. The symbolic expression of thought falls within the free speech clause of the first amendment ... and the plaintiff village has the heavy burden of justifying the imposition of a prior restraint upon defendants' right to freedom of speech....

The village of Skokie seeks to meet this burden by application of the "fighting words" doctrine.... That doctrine was designed to permit punishment of extremely hostile personal communication likely to cause immediate physical response.... *T*he Supreme Court restated the description of fighting words as "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." ... Plaintiff urges ... that the exhibition of the Nazi symbol, the swastika, addresses to ordinary citizens a message which is tantamount to fighting words.

***

The display of the swastika, as offensive to the principles of a free nation as the memories it recalls may be, is symbolic political speech intended to convey to the public the beliefs of those who display it. It does not, in our opinion, fall within the definition of "fighting words," and that doctrine cannot be used here to overcome the heavy presumption against the constitutional validity of a prior restraint.

Nor can we find that the swastika, while not representing fighting words, is nevertheless so offensive and peace threatening to the public that its display can be enjoined. We do not doubt that the sight of this symbol is abhorrent to the Jewish citizens of Skokie, and that the survivors of the Nazi persecutions, tormented by their recollections, may have strong feelings regarding its display. Yet is entirely clear that this factor does not justify enjoining defendants' speech.

***

In summary, as we read the controlling Supreme Court opinions, use of the swastika is a symbolic form of free speech entitled to first amendment protections. Its display on uniforms or banners by those engaged in peaceful demonstrations cannot be totally precluded solely because that display may provoke a violent reaction by those who view it. Particularly is this true where, as here, there has been advance notice by the demonstrators of their plans so that they have become, as the complaint alleges, "common knowledge" and those to whom sight of the swastika banner or uniforms would be offensive are forewarned and need not view them. A speaker who gives prior notice of his message has not compelled a confrontation with those who voluntarily listen.

New York Times Co. v. Sullivan
376 U.S. 254 (1964)

BRENNAN, J., joined by Chief Justice Warren and Justices Clark, Harlan, Stewart, and White. Justices Black, Douglas, and Goldberg concurred separately.

We are required in this case for the first time to determine the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action brought by a public official against critics of his official conduct.

Respondent L.B. Sullivan is one of three elected Commissioners of the City of Montgomery, Alabama. *He is the Superintendent of the police and fire departments.* He brought this civil libel action against...petitioner the New York Times Company, a New York corporation which publishes the New York Times, a daily newspaper. A jury in the circuit court of Montgomery County awarded him damages of $500,000 against... the petitioner, and the Supreme Court of Alabama affirmed.

Respondent's complaint alleged that he had been libeled by statements in a full page advertisement that was carried by the New York Times on March 29, 1960. Entitled "Heed their rising voices," the advertisement began by saying that "as the whole world knows, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U.S. Constitution and the Bill of Rights." It went on to charge that

> "in their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom."

Succeeding paragraphs... illustrated the "wave of terror" by describing certain alleged events. The text concluded with an appeal for funds for three purposes: support of the student movement, "the struggle for the right to vote," and the legal defense of Dr. Martin Luther King, Jr., leader of the movement, against a perjury indictment then pending in Montgomery....

Of the ten paragraphs of text in the advertisement, the third and a portion of the sixth were the basis of respondent's claim of libel. They read as follows:

Third paragraph:

> "In Montgomery, Alabama, after students sang "My Country,'Tis of Thee" on the State Capital steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an effort to starve them into submission."

Sixth paragraph:

> "Again and again Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times - for 'speeding,' 'loitering,' and similar 'offenses.' And now they have charged him with 'perjury' - a felony under which they could imprison him for ten years."

Although neither of these paragraphs mentioned respondent by name, he contended that the word "police" in the third paragraph referred to him as the Montgomery Commissioner who supervised the Police Department, so that he was being accused of "ringing" the campus with police.... As to the sixth paragraph, he contended that...the statement "they have arrested Dr. King seven times" would be read as referring to him.... .

It is uncontroverted that some of the statements contained in the two paragraphs were not accurate descriptions of events which occurred in Montgomery. Although Negro students staged a demonstration on the State Capitol steps, they sang the National Anthem, and not "My Country, 'Tis of Thee."... The campus dining hall was not padlocked on any occasion.... . Not the entire student body, but most of it, had protested the expulsion; not by refusing to register, but by boycotting classes on a single day; virtually all the students did register for the *next* semester.

***

...We reverse the judgement. We hold that the rule of law applied by the Alabama courts is constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action brought by a public official against critics of his official conduct. We further hold that under the proper safeguards the evidence presented in this case is constitutionally insufficient to support the judgment for respondent.

...*Respondent contends that freedom of the press* is inapplicable here,...because the allegedly libelous statements were published as part of a paid, "commercial" advertisement.... That the Times was paid for publishing the advertisement is...immaterial... . Any other conclusion would discourage newspapers form carrying "editorial advertisements" of this type, and so might shut off an important outlet...to *those* who do not themselves have access to publishing facilities... .

Under Alabama law..., if [a person is libelled] the words "tend to injure a person in his reputation, or to bring him into public contempt."... A jury must find that the words were published *and concerned* the plaintiff, but where the plaintiff is a public official *that fact* is sufficient evidence to support a finding that his reputation has been affected by statements that reflect on the agency of which he is in charge. Once libel is established, *there is no defense* unless *the defendant* can persuade the jury that the words were true in all their particulars....

The question before us is whether this rule of liability...abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments.

...The Constitution does not protect libelous publications. *However, libel* must be measured by standards that satisfy the First Amendment.... We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include...sometimes unpleasantly sharp attacks on government and public officials.... The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would clearly seem to qualify for constitutional protection. The question is whether it forfeits that protection by the falsity of some of its factual statements....

A defense for erroneous statements honestly made is...essential.... The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" - that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

***

In this case the proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands, and hence...it would not constitutionally sustain the judgment for the respondent under the proper rule of law.... The facts do not support a finding of actual malice....

We also think the evidence was constitutionally defective in another respect: it was incapable of supporting the jury's finding that the allegedly libelous statements were made "of and concerning" respondent.... There was no reference to respondent in the advertisement, either by name or official position.... Although *some of* the statements may be taken as referring to the police, they did not make any reference to respondent as an individual.

Judgement reversed.

Wynberg v. National Enquirer, Inc.
564 F. Supp. 924 (C.D. Cal. 1982)

Stephens, Senior District Judge.

In 1975, Plaintiff, Henry Wynberg, had a brief but celebrated "close personal relationship," ... with Elizabeth Taylor. Although the relationship lasted for only 14 months, it generated at least 86 news articles. The Defendants, National Enquirer, Inc., published a story on March 2, 1976, reporting certain sentiments and opinions concerning the relationship. Mr. Johann Sebastian Bach was Elizabeth Taylor's business manager. While the article included Mr. Bach's statements and opinions covering a variety of incidents relating to the relationship in question, the gist of the article and the basis for Plaintiff's cause of action is that Plaintiff used this relationship for his financial gain. ...

Since there are no disputed facts, there remain only the following questions of law to be determined by this Court:

... Whether the allegedly defamatory statements and opinions expresed in the article are non-actionable because they are substantially true? ...

... Whether Plaintiff has shown facts which constitute evidence that Defendants acted with actual malice towards him in writing and publishing this article?

... Under the First Amendment, the rule is well established that the expression of an opinion does not constitute an actionable cause of action for defamation. ... The United States Supreme Court has ruled that "the most repulsive speech enjoys immunity provided it falls short of a deliberate or reckless untruth " ....

The specific statements attributed to Mr. Bach in the Enquirer article were either expressions of sentiment and opinion or statements of fact .... The article quoted Mr. Bach as follows:

"I still cannot understand how such an intelligent woman allowed herself to be fooled by a man like Wynberg." ...

"The total for the 14 months Wynberg lived with Madam was more than two million Swiss francs — which worked out to around $770,000. And I suspect the real total was even more." ...

"I discovered one day that Madam had even opened a bank account for Wynberg here in Switzerland. He was always asking Madam for money."

..."He entertained hundreds of people to make an impression. I used to see him. It made me feel sick. Especially when I knew that without Madam, his pockets would be empty." ...

Under the controlling laws of defamation, even opinions which criticize the character, habits, motives, and morals of an individual — without more — are non-actionable. ...

Other than the statements of personal sentiment or opinion attributed to Bach, the article is composed of factual statements to which truth is an absolute defense. ...

Plaintiff brought this action because he believed that the article mischaracterized him as a person who financially exploited his relationship with Elizabeth Taylor, but the record supports this characterization. Each of the allegedly defamatory statements is substantially true.

***

Plaintiff's reputation for taking advantage of women generally, and of Miss Taylor specifically, is undisputed. ... Wynberg does not contest that he has been convicted for criminal conduct on five separate occasions. *The offenses included bribery, prostitution, grand theft, and fraud.*

***

Owing to his "close personal relationship" with Elizabeth Taylor for over 14 months, and the substantial publicity they received, Wynberg, under controlling case law, is a "public figure" relative to the issue of their relationship. ... In order to prevail in this defamation action, the law would require "clear and convincing" proof that the National Enquirer had acted with "actual malice — that is, with knowledge that the article was false or with reckless disregard of whether it was false or not." ...

The Record is totally lacking in a showing that competent evidence exists indicating that the article was written and published as true ... when Defendants knew it was false.... The article's author, for example, Mr. David Burk, is an esteemed journalist on the national and international news fronts. He testified under oath ... that he sought and secured information and confirmations from more sources on this story than on any other publication on which he worked for the Enquirer. ... Based on these facts ... Mr. Burk and his editors were reasonable in relying upon Mr. Burk's sources, and in writing and publishing the story as they did.

The Court dismissed the claims against the National Enquirer.

Dorsey, a.k.a. Engelbert Humperdinck v. National Enquirer, Inc.
19 Media Law Rep. 1673 (9th Cir.1991)

Beezer, Circuit Judge.

Arnold Dorsey, better known as Engelbert Humperdinck, sued the National Enquirer, Inc. alleging that an article in its tabloid defamed him.

In 1980, Kathy Jetter obtained a determination in New York Family Court that Dorsey was the father of her daughter. The court ordered Dorsey to pay child support and educational expenses. ... In May, 1988, Jetter petitioned the same court for an increase in child support payments and for an order requiring Dorsey to purchase life insurance naming the girl as his beneficiary.

Dorsey opposed the request and Jetter filed a Reply Affidavit. In the affidavit she stated: "The request for life insurance is of a dire necessity. Upon information and belief, the respondent has AIDS related syndrome and has been treated at Sloan Kettering in New York." ... Jetter gave the National Enquirer a copy of this affidavit. In its December 27, 1988 edition, the Enquirer published an article that highlighted the Reply Affidavit's allegation that Dorsey carries the AIDS virus.

The Enquirer's front page displays a photo of Dorsey next to the headline: "Mother of His Child Claims in Court ... Engelbert Has AIDS Virus." The article itself bears the headline: "Mom of Superstar Singer's Love Child Claims in Court ... Engelbert has AIDS Virus."

The one-page article quotes Jetter's affidavit twice and quotes Jetter as saying: "I never would have filed the court papers if I wasn't 100 percent convinced he has the AIDS virus." Jordan Stevens, a private investigator hired by Jetter is quoted as saying:

"Humperdinck is suffering from the AIDS virus. We have stated that belief in court papers and it is based on an intensive investigation of the singer during the past five years.

He was tested positive for the AIDS virus in early 1985. As stated in the court documents, he has had treatment for the AIDS virus at Sloan-Kettering hospital but our information is that the disease remains."

The article goes on to explain the ramifications of having the AIDS virus.

Dorsey filed a defamation action against the Enquirer. ... The district court *found* as a matter of law that the article was a fair and true report of allegations made in a judicial proceeding. Thus, it was privileged under California law and protected by the United States Constitution.

***

In crafting their treatment of the "fair and true" issue, the courts have recognized the importance of protecting a free and vigorous press. ...

Dorsey ... contends that the article is not a "fair and true" report of the Reply Affidavit's contents. He points to the Enquirer's inclusion of statements elaborating on the affidavit's allegations, and to the Enquirer's failure to include statements that

undercut Jetter's credibility. We agree with the district court that the article is a "fair and true" report of the affidavit.

T he California Supreme Court set forth the test for determining whether a publication qualifies as a "fair and true" report. ... *A*n article that captures the substance of the proceedings constitutes a "fair and true" report.

The "fair and true" requirement ... therefore does not require a media defendant "to justify every word of the alleged defamatory material that is published. The media's responsibility lies in ensuring that the 'gist or sting' of the report — its very substance— is accurately conveyed." ... Moreover, courts must accord media defendants a "certain amount of literary license" and exercise a "degree of flexibility" in determining what is a "fair report."

... Dorsey asserts that there is a greater "sting" in the article than in the reply affidavit. ...

Dorsey contends that the gist of the Reply Affidavit is that Jetter was not certain about her allegation that Dorsey had contracted the AIDS virus. ...In comparison, Dorsey contends, the article states that Jetter was 100 percent convinced that Dorsey has the AIDS virus. The article also contains statements from her investigator that assert without qualification that Dorsey has the AIDS virus, that Dorsey tested positive in early 1985, and that Jetter's belief is based upon a five-year intensive investigation.

***

The investigator's statements do not, however, go beyond the gist or sting of the affidavit. Dorsey claims the Enquirer article is defamatory because it alleges that he is infected by the AIDS virus. This is the substance of both the affidavit and the investigator's statements. In including Steven's statements, the Enquirer did not exceed the degree of flexibility and literary license accorded newspapers in making a "fair report" of a judicial proceeding.

***

Affirmed.

Weisman v. Lee
908 F.2d 1090 (1st Cir. 1990)

TORRUELLA, Circuit Judge. Bownes, Sr. Judge, concurring; Campbell, J. dissenting.

This is an appeal from the United States District Court for the District of Rhode Island. The issue presented for review is whether a benediction invoking a deity delivered by a member of the clergy at an annual public school graduation violates the Establishment Clause of the First Amendment of the Constitution as construed by the Supreme Court under the ... Lemon test. See Lemon v. Kurtzman, 403 U.S. 602 (1971). The District Court held that it did. ...

We are in agreement with the sound and pellucid opinion of the district court and see no reason to elaborate further.

Affirmed.

BOWNES, Senior Circuit Judge, concurring.

Although the district court wrote a very good opinion, which I join in affirming, I am compelled to make some additional comments of my own because of the significance of this case and the strong emotions that it and other Establishment Clause cases generate. ...

We are asked to determine whether the Establishment Clause prohibits public prayer at a public middle school graduation ceremony. ... We must examine Supreme Court Establishment Clause precedent to determine whether a prayer at a middle school graduation ceremony is similar enough to prayer in the classroom to be controlled by the Court's cases prohibiting school prayer.

***

... The Court

> has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student or his or her family.

Edwards v. Aguillard, 482 U.S. 578, 585 (1987). The Court has consistently struck down laws or practices that allow or mandate forms of prayer in the schools, and it has never allowed a prayer at a formal school function. ...

The appellants argue that this case is not controlled by the school prayer cases because graduation attendance is voluntary, graduation sometimes takes place off-campus, and it occurs only once a year. They contend that the prayers are acceptable under either the prevailing Lemon test or under the exception to that standard delineated in Marsh v. Chambers. Such arguments have been rejected by other courts.

...

In evaluating the acceptability of practices under the Establishment Clause, the Court has generally applied a derivative of the three-pronged "Lemon" test:

> First, the [practice] must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, [it] must not foster an 'excessive government entanglement with religion.'

...A practice or statute that fails to meet any of these requirements violates the Establishment Clause.

***

The district court properly and carefully applied this tast and determined that the practice of invocations and benedictions at school graduations ran afoul of the second, "effect," prong of the Lemon test.

***

Justice O'Connor has tried to focus the secular effect discussion on the government's endorsement of religion: "What is crucial is that a government practice not have the effect of communicating a message of governmental endorsement or disapproval of religion." ... As the district court held, it is self-evident that a prayer given by a religious person chosen by public school teachers communicates a message of government endorsement of religion.

***

Recognizing the strictness of the Lemon test, the appellants urge that we follow the limited exception to the application of the test delineated in Marsh v. Chambers, 463 U.S. 783 (1983). In Marsh, the Supreme Court upheld the practice of the Nebraska Legislature to begin each legislative session with a prayer. Marsh was based on the "unique" and specific historical argument that the framers did not find legislative prayers offensive to the Constitution because the first Congress approved of legislative prayers.

That history and those special circumstances are not present at middle school graduations.

***

A number of differences between this case and Marsh reinforce my view that Marsh is inapplicable to school prayer cases. Middle school students are at a very different stage in their development and relationship to prayers than state legislators. The legislators are able to debate and vote on whether and where to have prayers; students have the prayers imposed upon them. Appelants argue that because this is only a once-a-year occurrence it does not implicate the Establishment Clause the way daily prayers do. I disagree. Because graduation represents the culmination of years of schooling and is the school's final word to the students, the prayer is highlighted and takes on special significance at graduation.

***

By having benedictions and invocations at school graduations, the Providence School District has violated the Establishment Clause. I concur in affirming the opinion of the district court.

CAMPELL, J. dissenting.

...I prefer another view but am aware that the district court's position may be more in keeping with Supreme Court concensus.

***

There are problems that inhere in banning invocations — including those that mention a deity. By so doing we deprive people of an uplifting message that seems especially suitable for a rite of passage like a graduation, where those present wish to give deeply felt thanks. Our First Amendment jurisprudence normally protects speech rather than suppressing it. It seems anomalous to outlaw Rabbi Gutterman's tolerant, benign, nonsectarian supplication — a message so entirely appropriate in that setting, and surely inoffensive to virtually all of those present.

***

... *T* he question remains, is it necessary —to preserve separation of church and state —to prevent benedictions and invocations of this generous, inclusive sort? There is a tradition of such remarks at public functions going back to the Founders. ... It seems unreasonable to say that Marsh applies only to state legislative sessions. One would expect it to cover other public meetings. If so, it may extend to a graduation ceremony like this. ...

...I suspect that most Americans of all persuasions —including the increasing numbers who adhere to religions or ethical systems outside the Judeo-Christian framework — find it is appropriate and meaningful for public speakers to invoke the deity not as an expression of a particular sectarian belief but as an expression of transcendent values and of the mystery and idealism so absent from much of modern culture.

I think that *prior cases* provide a reasonable basis for a rule allowing invocations and benedictions on public, ceremonial occasions, provided authorities have a well-defined program for ensuring, on a rotating basis, that persons representative of a wide range of beliefs and ethical systems are invited to give the invocation.

... In brief, I think the First Amendment values are more richly and satisfactorily served by inclusiveness than by barring altogether a practice most people wish to have preserved.

State v. Friel
508 A.2d 123 (Me. 1986)

GLASSMAN, J., joined by Nichols, Roberts and Wathen.

The second amendment to the United States Constitution is simply inapplicable to the instant case. This amendment operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms. ...

We turn then to examine the Maine constitutional provision. Article I, Section 16 provides:

> Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned.

The right declared by section 16 is limited by its purpose: the arms may be kept and borne "for the common defense."...

The constitution also provides for an express grant to the Legislature of "full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution." The Legislature, by its enactment of section 393, reasonably determined that the common defense would not be served if a person, who by the commission of a felony had demonstrated a dangerous disregard for the law, possessed a firearm in the absence of a permit.

The defendant contends that the Legislature may not make this determination and points to the language in article I, section 16 guaranteeing the right to "*every* citizen" and providing that "this right shall never be questioned." We note that courts in other states with similar language in their constitutional provisions guaranteeing the right to keep and bear arms have rejected challenges, based on those provisions, to state statutes restricting or denying the possession of firearms by convicted felons. The constitutional guarantee must be interpreted in its entirety and in light of its purpose. We find nothing in the statute itself or in the facts of this case that infringes upon the purpose. We hold therefore that 15 M.R.S.A. section 393 on its face and as applied in the instant case does not violate article I, section 16.

State v. Brown
571 A.2d 816 (Me. 1990)

MCKUSICK, C.J., joined by Roberts, Wathen, Glassman, Clifford, Hornby and Collins.

In 1987 the people of this state voted to amend article I, section 16, of the Maine Constitution to provide that "every citizen has a right to keep and bear arms; and this right shall never be questioned." By their vote the people struck four words, "for the common defense," from the original provision, with the apparent intent of establishing for every citizen the individual right to bear arms, as opposed to the collective right to bear arms for the common defense. The issue on this appeal is the constitutionality, after the 1987 amendment, of the criminal statute prohibiting the possession of a firearm by a convicted felon. That issue raises two questions: 1) Did the amendment create an absolute right to keep and bear arms, and 2) if it did not, does the possession-by-a-felon statute exceed the permissible bounds of reasonable regulation under the State's constitutional police power. We answer both questions in the negative.

Prior to the 1987 amendment the Maine Constitution afforded no absolute right to keep and bear arms and we now hold that no absolute right was created by the amendment. Both prior to and after its amendment, section 16 provided that the right to keep and bear arms "shall never be questioned"; the amendment to section 16 merely deleted the words "for the common defense." Before those four words were deleted, the section 16 right was not absolute, as declared by our prior case law, and the evident purpose of the amendment was merely to transform a collective right to bear arms into an individual right and nothing more.

The procedure for amending the Maine Constitution *provides that* ... the Attorney General, prior to submission of the question to the voters, "shall prepare a brief explanatory statement which shall fairly describe the intent and content of each constitutional resolution or statewide referendum that may be presented to the people." ...The explanation provided:

> The proposal would amend the Maine Constitution to establish a new personal right to keep and carry weapons, in place of the existing right to bear arms for the common defense. In proposing the amendment, several legislators formally expressed their understanding and intention that <u>the proposed personal right, like the existing collective right, would be subject to reasonable limitation by legislation enacted at the state or local level</u>.

...In the absence of a challenge to the Attorney General's official explanation of the amendment, we assume that the voters intended to adopt the constitutional amendment on the terms in which it was presented to them, including the interpretation that the individual right created by the amendment, like its predecessor collective right, is not absolute but rather remains subject to reasonable regulation by the legislature.

Our holding that amended section 16 does not vest every citizen with an absolute right to possess firearms also finds support in a common sense view of the context in

which the voters of Maine adopted the 1987 amendment. Plainly, the people of Maine who voted for the amendment never intended that an inmate at Maine State Prison or a patient at a mental hospital would have an absolute right to possess a firearm. Once it is apparent, as common sense requires it to be, that amended section 16 does not bar some reasonable regulation of the constitutional right to possess firearms, the only remaining question becomes what are the outer bounds of reasonableness for the regulation of that non-absolute right.

...We now turn to the second question before us: Although the new individual right to keep and bear arms is not absolute, is the prohibition of the possession of a firearm by a person convicted of a "nonviolent" felony nonetheless unconstitutional because it is in excess of the State's police power? Our answer is no.

...It has long been settled law that the State possesses "police power" to pass general regulatory laws promoting the public health, welfare, safety, and morality. ... The police powers clause itself requires that the legislature's regulation of constitutional rights be reasonable. ...

Courts throughout the country have repeatedly found a rational relationship between statutes forbidding possession of firearms by any and all convicted felons and the legitimate state purpose of protecting the public from misuse of firearms. ...

Statutes prohibiting possession of firearms by a felon regardless of the nature of the underlying felony, have never been found constitutionally deficient. These statutes bear a rational relationship to the legitimate governmental purpose of protecting the public from the possession of firearms by those previously found to be in such serious violation of the law that imprisonment for more than a year has been found appropriate. The habitual motor vehicle offender who drives during his license revocation is a felon, having been recognized by the legislature of this State as having committed a Class C crime, a serious offense punishable by incarceration of up to five years. ...Defendant has demonstrated a disregard for the law to such an extent that, as applied to him, a legislative determination that he is an undesirable person to possess a firearm is entirely reasonable and consonant with the legitimate exercise of police power for the public safety.

Mapp v. Ohio
367 U.S. 643 (1961)

CLARK, J., joined by five justices. Black and Douglas concurred in separate opinions. Harlan, Frankfurter and Whittaker dissented.

...On May 23, 1957, three Cleveland police officers arrived at Dollree Mapp's residence in that city pursuant to information that "a person (was) hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but *Miss Mapp*, after telephoning her attorney, refused to admit them without a search warrant. They advised their headquarters of the situation and undertook a surveillance of the house.

The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. It appears that Miss Mapp was halfway down the stairs from the upper floor to the front door when the officers, in this high-handed manner, broke into the hall. She demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed *her* because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. Running roughshod over *Miss Mapp*, a policeman "grabbed" her, "twisted (her) hand," and she "yelled (and) pleaded with him" because "it was hurting." *Miss Mapp*, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. They also looked into a photo album and through personal papers belonging to *her*. The search spread to the rest of the second floor including the child's bedroom, the living room, the kitchen and a dinette. The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. ...

The State says that even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial...

***

We hold that all evidence obtained by searches and seizures in violation of the Constitution is ... inadmissible in a state court. ...

***

...Our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. ...

***

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. ...

...Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement in entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice. ...

California v. Greenwood
486 U.S. 35 (1988)

WHITE, J., joined by five justices. Brennan and Marshall dissented. Kennedy took no part in the decision in the case.

> The issue here is whether the Fourth Amendment prohibits the warrantless search and seizure of garbage left for collection outside the curtilage of a home. We conclude, in accordance with the vast majority of lower courts that have addressed the issue, that it does not.
>
> In early 1984, Investigator Jenny Stracner of the Laguna Beach Police Department received information indicating the respondent Greenwood might be engaged in narcotics trafficking. ...
>
> Stracner sought to investigate ... by conducting a surveillance of Greenwood's home. She observed several vehicles make brief stops at the house during the late-night and early morning hours, and she followed a truck from the house to a residence that had previously been under investigation as a narcotics-trafficking location.

On April 6, 1984, Stracner asked the neighborhood's regular trash collector to pick up the plastic garbage bags that Greenwood had left on the curb in front of his house and to turn the bags over to her without mixing their contents with garbage from other houses. *He did so.* The officer searched through the rubbish and found items indicative of narcotics use. She recited the information that she had gleaned from the trash search in an affidavit in support of a warrant to search Greenwood's home. *Narcotics were found in the house search and Greenwood was tried and convicted.*

The warrantless search and seizure of the garbage bags left at the curb outside the Greenwood house would violate the Fourth Amendment only if respondents manifested a subjective expectation of privacy in their garbage that society accepts as objectively reasonable. ...

They assert ... that they had, and exhibited, an expectation of privacy with respect to the trash that was searched by the police: The trash, which was placed on the street for collection at a fixed time, was contained in opaque plastic bags, which the garbage collector was expected to pick up, mingle with the trash of others, and deposit at the garbage dump. The trash was only temporarily on the street, and there was little likelihood that it would be inspected by anyone. ...

Here, we conclude that respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection. It is common knowledge that plastic garbge bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. ... Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so. Accordingly, having deposited their garbage "in an area particularly suited for public inspection and, in a manner of

speaking, public consumption, for the express purpose of having strangers take it," ... respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded.

BRENNAN, J., with whom Justice Marshall joins, dissenting.

Every week for two months, and at least once more a month later, the Laguna Beach police clawed through the trash that respondent Greenwood left in opaque, sealed bags on the curb outside his home. Complete strangers minutely scrutinized their bounty, undoubtedly dredging up intimate details of Grenwood's private life and habits. The intrusions proceeded without a warrant, and no court before or since has concluded that the police acted on probable cause to believe Greenwood was engaged in any criminal activity.

Scrutiny of another's trash is contrary to commonly accepted notions of civilized behavior. I suspect, therefore, that members of our society will be shocked to learn that the Court, the ultimate guarantor of liberty, deems unreasonable our expectations that the aspects of our private lives that are concealed safely in a trash bag will not become public.

***

Our precedent, ... leaves no room to doubt that had respondents been carrying their personal effects in opaque, sealed plastic bags — identical to the ones they placed on the curb — their privacy would have been protected from warrantless police intrusion. ...

Respondents deserve no less protection just because Greenwood used the bags to discard rather than to transport his personal effects. Their contents are not inherently any less private, and Greenwood's decision to discard them, at least in the manner in which he did, does not diminish his expectation of privacy.

***

... In evaluating the reasonableness of Greenwood's expectation that his sealed trash bags would not be invaded, the Court has held that we must look to "understandings that are recognized and permitted by society." Most of us, I believe, would be incensed to discover a meddler — whether a neighbor, a reporter, or a detective — scrutinizing our sealed trash containers to discover some detail of our personal lives.

***

In holding that the warrantless search of Greenwood's trash was consistent with the Fourth Amendment, the Court paints a grim picture of our society. ... The American society with which I am familiar "chooses to dwell in reasonable security and freedom from surveillance," ... and is more dedicated to individual liberty and more sensitive to intrusions on the sanctity of the home than the Court is willing to acknowledge.

I dissent.

New Jersey v. T.L.O.
469 U.S. 325 (1985)

White, J., joined by Burger, Powell, Rehnquist and O'Connor. Blackmun concurred in the judgment. Brennan, Marshall and Stevens concurred in part and dissented in part.

...On March 7, 1980, a teacher at Piscataway High School in Middlesex County, N.J., discovered two girls smoking in a lavatory. One of the girls was the respondent T.L.O., who at that time was a 14-year old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the principal's office, where they met with Assistant Vice Principal Theodore Choplick. In response to questioning by Mr. Choplick, T.L.O.'s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

Mr. Choplick asked T.L.O. to come into his private office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, Mr. Choplick also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, Mr. Choplick proceeded to search the purse thoroughly. The search revealed a small amount of marihuana, a pipe, a number of empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in marihuana dealing.

Mr. Choplick notified T.L.O.'s mother and the police , and turned the evidence of drug dealing over to the police. At the request of the police, T.L.O.'s mother took her daughter to police headquarters, where T.L.O. confessed that she had been selling marihuana at the high school. ... *The State brought delinquency charges against T.L.O. T.L.O. was found delinquent and sentenced to a year's probation. T.L.O. claimed the search of her purse was illegal under the Fourth Amendment, and that the evidence should be excluded. On appeal, the New Jersey Supreme Court ordered suppression of the evidence found in T.L.O.'s purse.*

***

Having heard argument on the legality of the search of T.L.O.'s purse, we are satisfied that the search did not violate the Fourth Amendment.

In determining whether the search at issue in this case violated the Fourth Amendment, we are faced initially with the question whether that Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials. We hold that it does.

...In carrying out searches and other disciplinary functions pursuant to *state* policies, school officials act as representatives of the State, not merely as surrogates

for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.

To hold that the Fourth Amendment applies to searches conducted by school authorities is only to begin the inquiry into the standards governing such searches. Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires "balancing the need to search against the invasion which the search entails." ...On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

We have recognized that even a limited search of the person is a substantial invasion of privacy. ... A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy.

***

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. ... We hold today that school officials need not obtain a warrant before searching a student who is under their authority.

The school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search. ... The accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the ... action was justified at its inception"; second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." Under ordinary circumstances, a search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive. ...

This standard will, we trust, neither unduly burden the efforts of school authorities to maintain order in their schools nor authorize unrestrained intrusions upon the privacy of schoolchildren. By focusing attention on the question of reasonableness, the standard will spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense. At the same time, the reasonableness standard should ensure that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.

The Court then held the search in this case met the standard of reasonableness, and therefore did not violate the Fourth Amendment.

BRENNAN, J., dissenting in part.

... Teachers, like all government officials, must conform their conduct to the Fourth Amendment's protections of personal privacy and personal security....

I do not, however, otherwise join the Court's opinion. Today's decision sanctions school officials to conduct full-scale searches on a "reasonableness" standard whose only definite content is that it is not the same test as the "probable cause" standard found in the text of the Fourth Amendment. In adopting this unclear, unprecedented, and unnecessary departure from generally applicable Fourth Amendment standards, the Court carves out a broad exception to standards that this Court has developed over years of considering Fourth Amendment problems. Its decision is supported neither by precedent nor even by a fair application of the "balancing test" it proclaims in this very opinion... .

Assistant Vice Principal Choplick's thorough excavation of T.L.O.'s purse was undoubtedly a serious intrusion on her privacy... *While I agree that a warrant should not be required for searches,* I emphatically disagree with the Court's decision to cast aside the constitutional probable cause standard....

STEVENS, J., dissenting in part.

... I would view this case differently if the Assistant Vice Principal had reason to believe T.L.O.'s purse contained evidence of criminal activity, or of an activity that would seriously disrupt school discipline. There was, however, absolutely no basis for any such assumption—not even a "hunch."

In this case, Mr. Choplick overreacted to what appeared to be nothing more than a minor infraction—a rule prohibiting smoking in the bathroom of the freshmen's and sophomores' building. It is, of course, true that he actually found evidence of serious wrongdoing by T.L.O., but no one claims that the prior search may be justified by his unexpected discovery. ... The invasion of privacy associated with the forcible opening of T.L.O.'s purse was entirely unjustified at its inception. ...

Michigan Department of State Police v. Sitz
110 L.Ed. 2d 412 (1990)

REHNQUIST, J., joined by White, O'Connor, Scalia and Kennedy. Blackmun concurred in the judgment. Brennan, Marshall and Stevens dissented.

In 1986, a group of Michigan law enforcement officials established a set of guidelines for the operation of sobriety checkpoints. Under the guidelines, checkpoints would be set up at selected sites along state roads. All vehicles passing through a checkpoint would be stopped and drivers briefly examined for signs of intoxication. In cases where a checkpoint officer detected signs of intoxication, the motorist would be directed to a location out of the traffic flow where an officer would check the motorist's driver's license and car registration and, if warranted, conduct further sobriety tests. Should the field tests and the officer's observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to resume their journey immediately.

Under the first checkpoint, 126 vehicles passed through the checkpoint. ... The average delay for each vehicle was approximately 25 seconds. Two drivers were detained for field sobriety testing, and one of the two was arrested for driving under the influence of alcohol.

On the day before the operation of the checkpoint, *a group of Michigan drivers sued to prevent checkpoint operations.... They maintained that it was illegal to stop drivers without probable cause or at least reasonable suspicion....*

A Fourth Amendment "seizure" occurs when a vehicle is stopped at a checkpoint... . The question thus becomes whether such seizures are "reasonable" under the Fourth Amendment. ...

No one can seriously dispute the magnitude of the drunken driving problem.... The intrusion on *motorists as a result of the roadblocks...* is slight.... *The* duration of the seizure and the intensity of the investigation *was* minimal.... .

The Court next discusses the level of "fear and surprise" caused by encountering such an unexpected checkpoint. The "fear and surprise" to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a sobriety checkpoint but, rather, the fear and surprise *caused* in law abiding motorists by the nature of the stop.... *The* circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion. ...

*Moreover, the fact that the stops did not catch many people does not make them unreasonable....*The choice among *alternative means for dealing with drunk driving* remains with the governmental officials who have a unique understanding of, and a responsibility for *limited money and police officers.*

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In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program. We therefore hold that it is consistent with the Fourth Amendment. ...

BRENNAN, J., dissenting.

In most *seizure* cases, the police must possess probable cause for a seizure to be judged reasonable. *Where the seizure is only a minimal intrusion*, the Government *should have to prove* that it had reasonable suspicion *of unlawful* conduct by the person "seized...." Some level of suspicion *of unlawful conduct is essential to ensure the* protection the Fourth Amendment provides against arbitrary government action.... By holding that no level of suspicion is necessary before the police may stop a car for the purpose of preventing drunken driving, the Court potentially subjects the general public to arbitrary or harassing conduct by the police. ...

I do not dispute the immense social cost caused by drunken drivers, nor do I slight the government's efforts to prevent such tragic losses. Indeed, I would hazard a guess that today's opinion will be received favorably by a majority of our society. ...

But consensus that a particular law enforcement technique serves a laudable purpose has never been the touchstone of constitutional analysis. ...

STEVENS, J., dissenting.

A sobriety checkpoint is usually operated at night at an unannounced location. Surprise is crucial to its method. ... *Even the innocent will feel anxious as they approach a checkpoint*. Unwanted attention from the local police *is not only experienced by criminals*. Moreover, those who have found—by reason of prejudice or misfortune—that encounters with the police may become adversarial or unpleasant...will have grounds for worrying at any stop designed to elicit signs of suspicious behavior. Being stopped by the police is distressing even when it should not be terrifying. ...

The most disturbing aspect of the Court's decision today is that it appears to give no weight to the citizen's interest in freedom from suspicionless...seizures. ...

Unfortunately, the Court is transfixed by the wrong symbol—the illusory prospect of punishing countless intoxicated motorists—when it should keep its eyes on the road plainly marked by the Constitution. ...

Miranda v. Arizona
384 U.S. 436 (1966)

WARREN, C.J., joined by four justices. Justices Clark, Harlan, Stewart and White dissented.

The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.

We dealt with certain phases of this problem recently in Escobedo v. Illinois, 378 U.S. 478 (1964). There, as in the four cases before us, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. ... We held that the statements thus made were constitutionally inadmissible.

... We start here, as we did in Escobedo, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized and applied in other settings. ... That case was but an explication of basic rights that are enshrined in our Constitution — that "No person ... shall be compelled in any criminal case to be a witness against himself," and that "the accused shall ... have the Assistance of Counsel"—rights which were put in jeopardy in that case through official overbearing. These precious rights were fixed in our Constitution only after centuries of persecution and struggle.

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An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today. *The Court discusses examples, and later in the opinion gives the facts of the Miranda case, one of four being appealed. The facts are these:*

On March 13, 1963, petitioner, Ernesto Miranda, was arrested at his home and taken in custody to a Phoenix police station. He was there identified by the complaining witness. The police then took him to "Interrogation Room No. 2" of the detective bureau. There he was questioned by two police officers. The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present. Two hours later, the officers emerged from the interrogation room with a written confession signed by Miranda. ...

Miranda was found guilty of kidnapping and rape. He was sentenced to 20 to 30 years' imprisonment on each count....

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Even without employing brutality, ... the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals. ... The potential for compulsion is forcefully apparent, for example, in Miranda, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies ....

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We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. ...

... *T* he following safeguards must be observed.

At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. ...

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. ...

T he right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today. Our aim is to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process. ...

Accordingly we hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation....

I t is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. ... The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent —the person most often subjected to interrogation —the knowledge that he too has a right to have counsel present.

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To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and ... the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

The Court then reviews the four cases. Concerning Miranda, the Court reversed the conviction because he was not informed of his right to remain silent or his right to have an attorney present. Without these warnings his confession was not admissible at trial.

Gideon v. Wainwright
372 U.S. 335 (1963)

BLACK, J., joined by all the justices. Douglas, Clark and Harlan wrote concurring opinions.

Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:

"The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.

"The DEFENDANT: The United States Supreme Court says I am entitled to be represented by Counsel."

Put to trial before a jury, Gideon conducted his defense about as well as could be expected from a layman. ... The jury returned a verdict of guilty, and petitioner was sentenced to serve five years in the state prison.

Gideon prepared and signed a habeas corpus petition stating: "I, Clarence Earl Gideon, claim that I was denied the rights of the 4th, 5th and 14th amendments of the Bill of Rights." The U.S. Supreme Court accepted the petition for review after the Florida Supreme Court denied relief.

The Court reviewed its prior cases regarding essential elements of a fair trial and overruled Betts v. Brady (1942), which held the right to counsel is not a fundamental right to be applied to the states by the 14th Amendment.

... Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This sems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. ...

Reversed.

Roe v. Wade
410 U.S. 113 (1973)

BLACKMUN, J. delivered the opinion of the Court, in which Chief Justice Burger and Justices Douglas, Brennan, Stewart, Powell and Marshall joined. Justices White and Rehnquist dissented.

This Texas federal appeal and its Georgia companion, Doe v. Bolton, present constitutional challenges to state criminal abortion legislation. ...

We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.

In addition, population growth, pollution, poverty, and racial overtones tend to complicate and not to simplify the problem.

Our task, of course, is to resolve the issue by constitutional measurement free of emotion and of predilection. We seek earnestly to do this, and, because we do, we have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortive procedure over the centuries. ...

The Texas statutes that concern us here...make it a crime to "procure an abortion," as therein defined, or to attempt one, except with respect to "an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." Similar statutes are in existence in a majority of the States.

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Jane Roe, a single woman who was residing in Dallas County, Texas, instituted this federal action in March 1970 against the District Attorney of the county. She sought a declaratory judgment that the Texas criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes.

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Three reasons have been advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence.

It has been argued occasionally that these laws were the product of a Victorian social concern to discourage illicit sexual conduct. Texas, however, does not advance this justification in the present case, and it appears that no court or commentator has taken the argument seriously. ...

A second reason is concerned with abortion as a medical procedure. When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. ... Thus is has been argued that a State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy.

Modern medical techniques have altered this situation. Appellants and various **amici** refer to medical data indicating that abortion in early pregnancy, that is, prior to the end of the first trimester, although not without its risk, is now relatively safe. Mortality rates for women undergoing early abortions, where the procedure is legal, appear to be as low as or lower than the rates for normal childbirth. Consequently, any interest of the State in protecting the woman from an inherently hazardous procedure, except when it would be equally dangerous for her to forgo it, has largely disappeared. Of course, important state interests in the area of health and medical standards do remain. The State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. ... Moreover, the risk to the woman increases as her pregnancy continues. Thus the State retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy.

The third reason is the State's interest - some phrase it in terms of duty - in protecting prenatal life. ... Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least **potential** life is involved, the State may assert interests beyond the protection of the pregnant woman alone.

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It is with these interests and the weight to be attached to them, that this case is concerned.

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however...the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. ...

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be

involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

On the basis of elements such as these, appellants and some **amici** argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellants' arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, is unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a state may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some **amici** that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. ...

We therefore conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.

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Texas urges that...life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

***

...We do not agree that, by adopting one theory of life, Texas may override the rights of pregnant women that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the state or a nonresident who seeks medical consultation and treatment there, and that it has still **another** important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes "compelling."

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now established medical fact that until the end of the first trimester mortality in abortion is less than

mortality in normal childbirth. If follows that, from and after this point, a state may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like.

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that in his medical judgment the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother.

Measured against these odds, *the Texas statute*, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore, cannot survive the constitutional attack made upon it here.

To summarize and to repeat:

1. A state criminal abortion statute...that excepts from criminality only a life saving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.
   (a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.
   (b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.
   (c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

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REHNQUIST, J. dissenting.

...I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case. Texas, by the statute here challenged, bars the performance of a medical abortion by a licensed physician on a plaintiff such as Roe. A transaction resulting in an operation such as this is not "private" in the ordinary usage of that word. Nor is the "privacy" that the Court finds here even a distant relative of the freedom from searches and seizures protected by the Fourth Amendment to the Constitution, which the Court has referred to as embodying a right to privacy.

If the Court means by the term "privacy" no more than that the claim of a person to be free from unwanted state regulation of consensual transactions may be a form of "liberty" protected by the Fourteenth Amendment, there is no doubt that similar claims have been upheld in our earlier decisions on the basis of that liberty. I agree with the statement of Justice Stewart in his concurring opinion that the "liberty," against deprivation of which without due process the Fourteenth Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law such as that challenged has a rational relation to a valid state objective. The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit, albeit a broad one, on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated.... But the Court's sweeping invalidation of any restrictions on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors that the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

Webster v. Reproductive Health Services
492 U.S. 490 (1989)

Rehnquist, C.J., announced the judgment of the Court and delivered a plurality opinion which Justices White and Kennedy joined. Justices O'Connor and Scalia concurred in part and concurred in the judgment. Justices Blackmun, Brennan and Marshall concurred in part and dissented in part, as did Justice Stevens.

This appeal concerns the constitutionality of a Missouri statute regulating the performance of abortions. The United States Court of Appeals for the Eighth Circuit struck down several provisions of the statute on the ground that they violated this Court's decision in Roe v. Wade, 410 U.S. 113 (1973), and cases following it. We...now reverse.

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The viability-testing provision of the Missouri Act is concerned with promoting the State's interest in potential human life rather than in maternal health. Section 188.029 [*of the statute*] creates what is essentially a presumption of viability at 20 weeks, which the physician must rebut with tests indicating that the fetus is not viable prior to performing an abortion.

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We think that the doubt cast upon the Missouri statute...is not so much a flaw in the statute as it is a reflection of the fact that the rigid trimester analysis of the course of a pregnancy enunciated in Roe has resulted in subsequent cases...making constitutional law in this area a virtual Procrustean bed. ...

In the first place, the rigid Roe framework is hardly consistent with the notion of a Constitution cast in general terms, as ours is, and usually speaking in general principles, as ours does. The key elements of the Roe framework - trimesters and viability - are not found in the text of the Constitution or in any place else one would expect to find a constitutional principle. ...

In the second place, we do not see why the State's interest in protecting potential human life should come into existence only at the point of viability, and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability. The dissenters in Thornburgh v. American College of Obstetricians and Gynecologists writing in the context of the Roe trimester analysis, would have recognized this fact by positing against the "fundamental right" recognized in Roe, the State's "compelling interest" in protecting potential human life throughout pregnancy. "The State's interest, if compelling after viability, is equally compelling before viability."...

The tests that *the Missouri law* requires the physician to perform are designed to determine viability. The State has chosen viability as the point at which its interest in potential human life must be safeguarded. It is true that the tests in question increase the expense of abortion, and regulate the discretion of the physician in

determining the viability of the fetus. Since the tests will undoubtedly show in many cases that the fetus is not viable, the tests will have been performed for what were in fact second-trimester abortions. But we are satisfied that the requirement of these tests permissibly furthers the State's interest in protecting potential human life, and we therefore believe Section 188.029 *of the law* to be constitutional.

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Both appellants and the United States as **Amicus Curiae** have urged that we overrule our decision in Roe v. Wade. The facts of the present case, however, differ from those at issue in Roe. Here, Missouri has determined that viability is the point at which its interest in potential human life must be safeguarded. In Roe, on the other hand, the Texas statute criminalized the performance of **all** abortions, except when the mother's life was at stake. This case therefore affords us no occasion to revisit the holding of Roe, which was that the Texas statute unconstitutionally infringed the right to an abortion derived from the Due Process Clause, and we leave it undisturbed. To the extent indicated in our opinion, we would modify and narrow Roe and succeeding cases.

Because none of the challenged provisions of the Missouri Act properly before us conflict with the Constitution, the judgment of the Court of Appeals is

Reversed.

BLACKMUN, C.J., with whom Justice Brennan and Justice Marshall join, concurring in part and dissenting in part.

Today, Roe v. Wade, 410 U.S. 113 (1973), and the fundamental constitutional right of women to decide whether to terminate a pregnancy, survive but are not secure. Although the Court extricates itself from this case without making a single, even incremental, change in the law of abortion, the plurality and Justice Scalia would overrule Roe (the first silently, the other explicitly) and would return to the States virtually unfettered authority to control the quintessentially intimate, personal, and life-directing decision whether to carry a fetus to term.

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The plurality opinion is far more remarkable for the arguments that it does not advance than for those that it does. The plurality does not even mention, much less join, the true jurisprudential debate underlying this case: whether the Constitution includes an "unenumerated" general right to privacy as recognized in many of our decisions, most notably Griswold v. Connecticut, and Roe, and, more specifically, whether and to what extent such a right to privacy extends to matters of childbearing and family life, including abortion. These are questions of unsurpassed significance in this Court's interpretation of the Constitution, and mark the battleground upon which this case was fought, by the parties, by the Solicitor General as **amicus** on behalf of petitioners, and by an unprecedented number of **amici**. On these grounds, abandoned by the plurality, the Court should decide this case.

But rather than arguing that the text of the Constitution makes no mention of the right to privacy, the plurality complains that the critical elements of the Roe framework - trimesters and viability - do not appear in the Constitution and are, therefore, somehow inconsistent with a Constitution cast in general terms. Were this a true concern, we would have to abandon most of our constitutional jurisprudence. As the plurality well knows, or should know, the "critical elements" of countless constitutional doctrines nowhere appear in the Constitution's text. ...

With respect to the Roe framework, the general constitutional principle, indeed the fundamental constitutional right, for which it was developed is the right to privacy, see, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965), a species of "liberty" protected by the Due Process Clause, which under our past decisions safeguards the right of women to exercise some control over their own role in procreation. As we recently reaffirmed in Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986), few decisions are "more basic to individual dignity and autonomy" or more appropriate to that "certain private sphere of individual liberty" that the Constitution reserves from the intrusive reach of government than the right to make the uniquely personal, intimate and self-determining decision whether to end a pregnancy. It is this general principle, the " 'moral fact that a person belongs to himself and not others nor to society as a whole,' "...that is found in the Constitution. The trimester framework simply defines and limits that right to privacy in the abortion context to accommodate, not destroy, a State's legitimate interest in protecting the health of pregnant women and in preserving potential human life. Fashioning such accommodations between individual rights and the legitimate interests of government, establishing benchmarks and standards with which to evaluate the competing claims of individuals and government, lies at the very heart of constitutional adjudication. To the extent that the trimester framework is useful in this enterprise, it is not only consistent with constitutional interpretation, but necessary to the wise and just exercise of this Court's paramount authority to define the scope of constitutional rights. ...

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Finally, the plurality asserts that the trimester framework cannot stand because the State's interest in potential life is compelling throughout pregnancy, not merely after viability. The opinion contains not one word of rationale for its view of the State's interest. This "it-is-so-because-we-say-so" jurisprudence constitutes nothing other than an attempted exercise of brute force; reason, much less persuasion, has no place.

In answering the plurality's claim that the State's interest in the fetus is uniform and compelling throughout pregnancy, I cannot improve upon what Justice Stevens has written:

> "I should think it obvious that the State's interest in the protection of an embryo - even if that interest is defined as 'protecting those who will be citizens'... - increases progressively and dramatically as the organism's capacity to feel pain, to experience pleasure, to survive, and to react to its

surroundings increases day by day. The development of a fetus - and pregnancy itself - are not static conditions, and the assertion that the government's interest is static simply ignores this reality... . Unless the religious view that a fetus is a 'person' is adopted...there is a fundamental and well-recognized difference between a fetus and a human being; indeed, if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the state legislatures. And if distinctions may be drawn between a fetus and a human being in terms of the state interest in their protection - even though the fetus represents one of 'those who will be citizens' - it seems to me quite odd to argue that distinctions may not also be drawn between the state interest in protecting the freshly fertilized egg and the state interest in protecting the 9-month-gestated, fully sentient fetus on the eve of birth. Recognition of this distinction is supported not only by logic, but also by history and by our shared experiences." Thornburgh, 476 U.S., at 778-779 (footnotes omitted).

For my own part, I remain convinced, as six other Members of this Court 16 years ago were convinced, that the Roe framework, and the viability standard in particular, fairly, sensibly, and effectively functions to safeguard the constitutional liberties of pregnant women while recognizing and accommodating the State's interest in potential human life.

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For today, at least, the law of abortion stands undisturbed. For today, the women of this Nation still retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows.

I dissent.

Regents of the University of California v. Bakke
438 U.S. 265 (1978)

POWELL, announced the judgment of the Court.

This case presents a challenge to the special admissions program of the petitioner, the Medical School of the University of California at Davis, which is designed to assure the admission of a specified number of students from certain minority groups. ...

***

The Medical School of the University of California at Davis opened in 1968 with an entering class of 50 students. In 1971, the size of the entering class was increased to 100 students, a level at which it remains. No admissions program for disadvantaged or minority students existed when the school opened, and the first class contained three Asians but no blacks, no Mexican-Americans and no American Indians. Over the next two years, the faculty devised a special admissions program to increase the representation of "disadvantaged" students in each medical school class. The special program consisted of a separate admissions system operating in coordination with the regular admissions process.

***

Petitioner does not deny that decisions based on race or ethnic origin by faculties and administrations of state universities are reviewable under the Fourteenth Amendment. ...The parties do disagree as to the level of judicial scrutiny to be applied to the special admissions program.

***

En route to this crucial battle over the scope of judicial review, the parties fight a sharp preliminary action over the proper characterization of the special admissions program. *The University* prefers to view it as establishing a "goal" of minority representation in the Medical School. *Bakke*, echoing the courts below, labels it a racial quota.

This semantic distinction is beside the point; the special admissions program is undeniably a classification based on race and ethnic background. To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete only for 84 seats in the entering class, rather than the 100 open to minority applicants. Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status.

...Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.

***

Petitioner urges us to adopt for the first time a more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign." The clock of our liberties, however, cannot be turned back to 1868. ...It is far too late to argue that the guarantee of equal protection to all persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others. ... Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications at the expense of individuals belonging to other groups. Those classifications would be free from exacting judicial scrutiny. As these preferences began to have their desired effect, and the consequences of past discrimination were undone, new judicial rankings would be necessary. The kind of variable sociological and political analysis necessary to produce such rankings simply does not lie within the judicial competence—even if they otherwise were politically feasible and socially desirable.

Moreover, there are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is in fact benign. ...Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. ...Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

***

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred applicants have the opportunity to compete for every seat in the class.

The fatal flaw in petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. Such rights are not absolute. But when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of a person's skin..., that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest. *The University* has failed to carry this burden. For this reason, that portion of the California court's judgment holding petitioner's special admissions program invalid under the Fourteenth Amendment must be affirmed.

In enjoining *the University* from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest

that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court's judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

With respect to *Bakke's* entitlement to an injunction directing his admission to the Medical School, ...*he* is entitled to the injunction, and that portion of the judgment must be affirmed.

MARSHALL, J., separate opinion.

I agree with the judgment of the Court only insofar as it permits a university to consider the race of an applicant in making admissions decisions. I do not agree that petitioner's admissions program violates the Constitution. For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier.

Three hundred and fifty years ago, the Negro was dragged to this country in chains to be sold into slavery. Uprooted from his homeland and thrust into bondage for forced labor, the slave was deprived of all legal rights. It was unlawful to teach him to read; he could be sold away from his family and friends at the whim of his master; and killing or maiming him was not a crime. The system of slavery brutalized and dehumanized both master and slave.

***

The status of the Negro as property was officially erased by his emancipation at the end of the Civil War. But the long-awaited emancipation, while freeing the Negro from slavery, did not bring him citizenship or equality in any meaningful way. Slavery was replaced by a system of "laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value." ...Despite the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, the Negro was systematically denied the rights those Amendments were supposed to secure. The combined actions and inactions of the State and Federal Governments maintained Negroes in a position of legal inferiority for another century after the Civil War.

***

The enforced segregation of the races continued into the middle of the 20th century. In both World Wars, Negroes were for the most part confined to separate military units; it was not until 1948 that an end to segregation in the military was ordered by President Truman. And the history of the exclusion of Negro children from white public schools is too well known and recent to require repeating here. That

Negroes were deliberately excluded from public graduate and professional schools—and thereby denied the opportunity to become doctors, lawyers, engineers, and the like—is also well established. It is of course true that some of the Jim Crow laws (which the decisions of this Court had helped to foster) were struck down by this Court in a series of decisions leading up to Brown v. Board of Education. ...Those decisions, however, did not automatically end segregation, nor did they move Negroes from a position of legal inferiority to one of equality. The legacy of years of slavery and of years of second-class citizenship in the wake of emancipation could not be so easily eliminated.

***

In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that Americans will forever remain a divided society.

I do not believe that the Fourteenth Amendment requires us to accept that fate. Neither its history nor our past cases lend any support to the conclusion that a university may not remedy the cumulative effects of society's discrimination by giving consideration to race in an effort to increase the number and percentage of Negro doctors.

BLACKMUN, J., separate opinion.

***

I yield to no one in my earnest hope that the time will come when an "affirmative action" program is unnecessary and is, in truth, only a relic of the past. I would hope that we could reach this stage within a decade at the most. But the story of Brown v. Board of Education, decided almost a quarter of a century ago, suggests that that hope is a slim one. At some time, however, beyond any period of what some would claim is only transitional inequality, the United States must and will reach a stage of maturity where action along this line is no longer necessary. Then persons will be regarded as persons, and discrimination of the type we address today will be an ugly feature of history that is instructive but that is behind us.

***

I, of course, accept the propositions that (a) Fourteenth Amendment rights are personal; (b) racial and ethnic distinctions where they are stereotypes are inherently suspect and call for exacting judicial scrutiny; (c) academic freedom is a special concern of the First Amendment; and (d) the Fourteenth Amendment has expanded beyond its original 1868 concept. ...

This enlargement does not mean for me, however, that the Fourteenth Amendment has broken away from its moorings and its original intended purposes. Those

original aims persist. And that, in a distinct sense, is what "affirmative action," in the face of proper facts, is all about. If this conflicts with idealistic equality, that tension is original Fourteenth Amendment tension, constitutionally conceived and constitutionally imposed, and it is part of the Amendment's very nature until complete equality is achieved in the area. In this sense, constitutional equal protection is a shield.

***

I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetrate racial supremacy.

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Educational Materials for Instruction on Bill of Rights

*The Center for Research and Development in Law-Related Education (CRADLE) has published a catalogue listing 1300 teacher-written lesson plans on the Bill of Rights. There are also 67 other resource materials produced by other organizations. Copies of "National Repository Catalog of Teacher-Developed Lesson Plans on Law and the Constitution" are available for a fee from: CRADLE, Wake Forest University School of Law, P.O. Box 7206, Reynolda Station, Winston-Salem, NC 27109; telephone 1-800-437-1054 or 919-759-5872.

*The American Bar Association publishes a free catalogue of Bill of Rights teaching resources. Contact Tammy Russo, A.B.A., Division for Public Education, 541 North Fairbanks Court, Chicago, IL 60611-3314; telephone 312-988-5745.

*"Resources for Teachers on the Bill of Rights," by the ERIC Clearinghouse for Social Studies/Social Science Education, contains a bibliography and directory of national and state organiztions promoting teaching about the Constitution. It also contains sample lessons on the Bill of Rights, reprints of key historical documents, background papers on the subject and a Bill of Rights chronology. The guide is $15 per copy plus $2 for shipping and handling from Publications Manager, Social Studies Development Center, Indiana University, 2805 East 10th St., Suite 120, Bloomington, IN 47408.

*The American Civil Liberties Union has a directory of briefing papers, books, pamphlets and posters on lawsuits that involved the Bill of Rights. The address is 132 West 43rd St., New York, NY 10036; telephone 212-944-9800, ext. 607.

* A catalogue of publications about the Bill of Rights is available from the American Historical Association at 400 A St. S.E., Washington , DC 20003; telephone 202-544-2422.

*"Right in History" available from National History Day, 11201 Euclid Ave., Cleveland, Ohio 44106; telephone 216-421-8803.

*Maine Court Orientation Tape on Jury System - available at USM Law Library and county courts.

Understanding Our Basic Freedoms

The Bill of Rights in Action

A Worktext for Adult Learners

by

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Maine Law Related Education Program

University of Maine School of Law
Portland, Maine

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Introduction

In 1991 we celebrated the 200th anniversary of the Bill of Rights. 1991 was the end of fourteen years of celebration of the great American experiment — an experiment in the application of democratic principles which safeguards the personal rights of the citizens of this country.

Major changes have occurred over the past few years in nations throughout the world. Many of these upheavals and changes reflect a move toward democracy based on the ideals and principles of America.

Starting with the Declaration of Independence in 1776 and the American Revolution, through the development and ratification of the Constitition and finally the inclusion of the Bill of Rights, the foundation was laid by our forefathers for a strong national government which recognized and valued personal rights and freedoms.

Over the past 200 years the Bill of Rights has been further defined by the courts. Individuals can continue to speak out when they feel they have been wronged.

Let us hope that over the next 200 years we can maintain all those freedoms which we often take for granted and further strengthen our belief in the democratic process. It is up to you.

Using This Worktext

This worktext will provide some basic background information about the development and interpretation of the Bill of Rights. A timeline is included so the reader can place events in chronological order. Teaching aids such as learning objectives for each unit, vocabulary words, a glossary, and questions and learning activities will help readers understand and experience the impact of the Bill of Rights on their daily lives. All the vocabulary words listed at the beginning of each chapter are defined in the glossary.

Although the first ten amendments, the Bill of Rights, are written out in their entirety, the focus will be on the First; the Second; the Fourth, Fifth and Sixth (taken as a group); and the Fourteenth Amendments. These amendments guarantee basic rights which have a great deal of relevance to adults living in Maine.

To prepare for the following chapters, it would be interesting to see what you already know. On the following pages is a brief quiz. Answer true or false to each question. Complete the chapters and your study and then go back and answer the questions again. Compare your two sets of answers against the answer key.

What Does the Bill of Rights Guarantee?

(Answer true or false to each question or statement.)

1. If a private company bans its employees from speaking freely, the First Amendment is violated.
2. In 1800, if the state or local police searched a person's home without a reason or a warrant, the Fourth Amendment was violated.
3. Most of the Bill of Rights applies to state and local governments today.
4. The text of the Constitution and its amendments protect the right to travel, marry and raise a family and vote.
5. Through Supreme Court decisions interpreting the Constitution and its amendments, the following rights are protected: health care, shelter, food or welfare.
6. The sources for the Bill of Rights were mainly American.
7. Freedom of speech protects a person's right to criticize the government, even if the speech embarrasses the government.
8. Freedom of speech does not allow a state to make it a crime to desecrate the American flag.
9. The drug peyote is part of an American Indian religious ceremony. The free-exercise-of-religion clause of the First Amendment is violated by a state law that does not allow the use of peyote, even during such a religious ceremony.
10. The First Amendment does not allow state colleges to expell students who make racist or sexist remarks in public.
11. Movies that are degrading to women but are not obscene may be prohibited consistent with the First Amendment.
12. A newspaper can never be stopped by the government from printing a truthful story because of the free-press clause of the First Amendment.

13. Suppose a newspaper writes a very damaging story about the mayor of a city, and the story turns out to be false. The newspaper checked out the facts carefully before printing the story. The First Amendment permits the mayor to recover damages from the newspaper for libel.

14. Hate groups such as the Ku-Klux Klan and American Nazi Party can be prohibited from marching in neighborhoods under the First Amendment.

15. If a person does not have enough money to hire a lawyer for trial, the government must provide one in both civil and criminal cases.

16. If the police find illegal drugs in the possession of a criminal suspect, but did so in violation of the Fourth Amendment, which requires a warrant or probable cause, the drugs cannot be used as evidence against him at trial.

17. If the police have probable cause to believe there are drugs in a car, they must obtain a warrant before they can search the car.

18. Stopping cars at police roadblocks to check for drunken driving, without a warrant and without any suspicion that the driver has been drinking, violates the Fourth Amendment.

19. Taking a suspect's blood by a police doctor to check for alcohol use violates the suspect's right against self-incrimination.

20. The Constitition provides only for a lawyer at criminal trials, not for pre-trial proceedings such as lineups or police questioning.

21. The Second Amendment clearly protects the right of the individual to bear arms.

22. The Bill of Rights is concerned solely with individual rights, not states' rights.

23. The government can take your property for a public purpose such as building a highway without paying for it.

24. A state can easily enact affirmative-action laws for government contracts that give preference to racial minorities to make up for past discrimination against racial minorities.

25. A student has the right to a due-process hearing before he can be suspended from public school.

Timeline Code

1. Magna Carta, June 15, 1215
2. Massachusetts Laws and Liberties, 1641
3. Maryland Toleration Act, 1649
4. Connecticut General Laws and Liberties, 1672
5. *Habeas Corpus*, 1679

6a. Pennsylvania Charter of Liberties, 1682

6b. New Hampshire Laws and Liberties, 1682

7. New York Charter of Liberties/Privileges
8. English Bill of Rights, December 16, 1689

9. Zenger Case, August 1735
10. First Continental Congress passes Declaration and Resolves, October 14, 1774
11. Virginia passes first Bill of Rights for a state, January 12, 1776
12. Declaration of Independence, July 4, 1776
13. American Revolution ends, 1783
14. United States Constitution signed, September 17, 1787
15. New Hampshire ratifies the Constitution and it becomes law, June 12, 1788

16a. Bill of Rights is introduced to Congress, June 2, 1789

16b. Congress agreed on 12 amendments, September 15, 1789

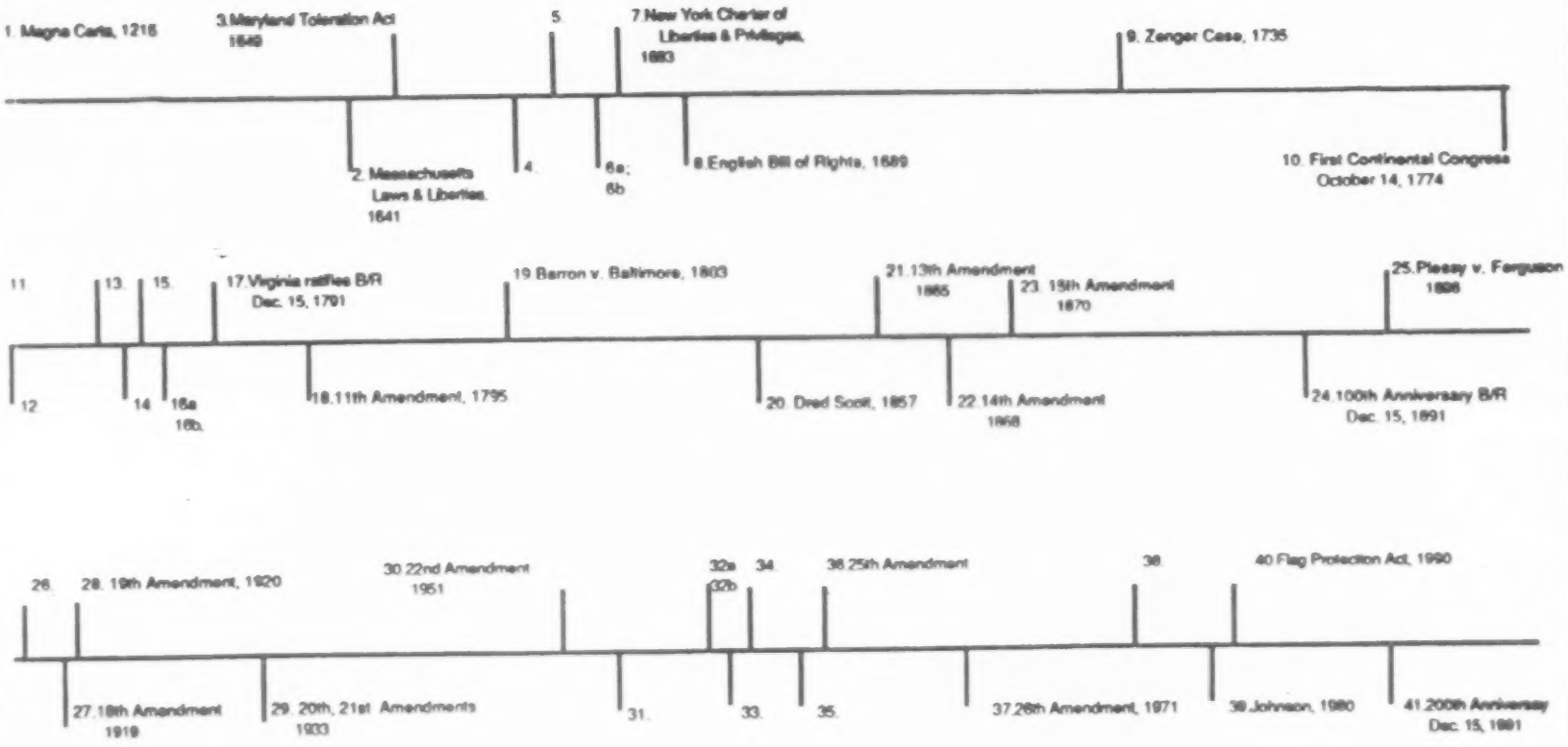
17. Virginia ratifies the Bill of Rights, December 15, 1791
18. Eleventh Amendment, 1799
19. Barron v. Baltimore, 1803
20. Dred Scott, 1857
21. Thirteenth Amendment, 1865
22. Fourteenth Amendment, 1868
23. Fifteenth Amendment, 1870
24. 100th Anniversary Bill of Rights, December 15, 1891
25. Plessy v. Ferguson, 1896
26. Sixteenth,Seventeenth Amendments 1913
27. Eighteenth Amendment, 1919
28. Nineteenth Amendment, 1920
29. Twentieth, Twenty-first Amendments, 1933
30. Twenty-second Amendment, 1951
31. Brown v. Board of Education (desegregation case), 1954

32a. Mapp v. Ohio (exclusionary rule)1961

32b. Twenty-third Amendment, 1961

33. Gideon v. Wainwright, 1963
34. Twenty-fourth Amendment, 1964
35. Miranda v. Arizona (Miranda warnings), 1966
36. Twenty-fifth Amendment, 1967
37. Twenty-sixth Amendment, 1971
38. New Jersey v. TLO (student searches) 1984
39. Texas v. Johnson (flag burning), 1989
40. Flag Protection Act, 1990
41. 200th Anniversary Bill of Rights,

Timeline



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Chapter One

Bill of Rights - An Overview

Students will be able to:

- *understand that some state constitutions guarantee more rights than the federal Bill of Rights.*
- *understand that the language of the Bill of Rights is legally binding.*
- *list rights and freedoms guaranteed by the Bill of Rights.*

VOCABULARY (Words are defined in the glossary):

drafters **infringe** **interpretation** **ratification** **fundamental rights**

Why study the Bill of Rights? Because these are fundamental rights which we tend to take for granted in the United States. The Bill of Rights guarantees such basic rights as freedom of speech and press, freedom of religion, privacy in our home and for our personal possessions, the right to bear arms, the right to trial by jury, and the right to be treated fairly under the law.

The Bill of Rights is attached to the Constitution as a separate document. The Bill of Rights is the first ten amendments to the Constitution. Instead of scattering the Bill of Rights throughout the Constitution, the authors decided to place them at the end of the Constitution. This decision gave the Bill of Rights an importance that would have been lost had they been placed throughout the Constitution. Also, the authors made the language of the Bill of Rights legally enforceable, which means that "ought" was changed to "shall." This decision had an impact on drafters of state constitutions. They changed the language in state constitutions to "shall" and "will." This action made the constitutions legally binding.

The ratification of the Bill of Rights acted as a check on the federal government. It guaranteed certain personal rights which the government could not infringe upon. These rights were guaranteed only against actions by the federal government — not against actions by state governments. It was not until the 14th amendment was adopted in 1868 that the states had to recognize most of the rights guaranteed at the federal level.

James Madison, the principal author of the Bill of Rights, used amendments proposed by the states and individual bills of rights from the states to write the amendments he proposed to the first Congress. There were many common themes throughout these amendments and bills of rights. Madison was able to write several amendments which included all the ideas that the citizens considered important.

When the Bill of Rights was finally ratified in 1791, ten of the proposed seventeen amendments were approved. These were named the Bill of Rights and added to the Constitution. They are as follows:

Text of The Bill of Rights

Actual Language	Revised Language
Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the the freedom of speech, or of the press, or the right of the people to assemble, and to petition the Government for a redress of grievances.	You have the right to practice any religion you want, to say what is on your mind, to write what you want other people to read, to meet with other people peacefully in groups, and to ask the government to correct things you think are wrong.
Amendment II: A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.	The people have the right to own and carry weapons.
Amendment III: No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.	The government cannot make you give soldiers food and a place to stay when there is no war.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The police cannot search your house or belongings without a legal paper (a warrant). To get a warrant, they must explain exactly what they are looking for and why they think it is there.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The government cannot punish you for a crime by putting you in jail or taking things that belong to you without following legal rules. It cannot put you on trial twice for the same crime or force you to say things against yourself. If the government needs your land for something, it must pay you.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

If the police accuse you of a crime they must tell you exactly what the crime is and let you question the witnesses. You have the right to a trial where a group of people who can be fair (a jury) hears both sides of the story. The trial must take place soon after the crime, and anyone who wants to may attend. You have the right to bring witnesses and a lawyer to help you tell your side of the story.

Amendment VII: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to rules of the common law.

If you are accused of a crime, that involves more than $20, you have the right to a trial by a jury. The jury decision is final, unless legal rules are violated during the trial.

Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

If you are accused of a crime, the government cannot demand an unreasonable amount of money (bail) to make sure you show up for the trial. If you are guilty, your punishment cannot be worse than the crime.

Amendment IX: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The government cannot take away your rights just because the Constitution does not mention some of them.

Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The United States government can use only the powers the Constitution talks about. All other rights belong to your state government or to you.

At first, after the Bill of Rights was ratified, it had little immediate effect. It was not until the twentieth century that the Bill of Rights began to be used extensively as protection for individual rights against the powers of the state and federal governments. Two changes have happened in this century. One has been the expansion of individual rights through legal interpretations by the United States Supreme Court. The second change has been the application of most of the Bill of Rights to the states using the Fourteenth Amendment due process clause. The courts now review state and federal laws and actions with an eye toward protecting the fundamental individual rights set forth in the Bill of Rights.

Supreme Court interpretations have expanded the reach of civil rights to all citizens, no matter where they live. These rights are applied equally in federal and state courts. Opinions of the Supreme Court have become the means for mediating social conflicts and determining the contemporary meaning of the Bill of Rights. The words of the first ten amendments now have practical meaning in our daily lives.

State constitutions sometimes go beyond the Bill of Rights and provide more extensive rights. An example would be in the Maine Constitution, Article I, Section 16: "Every citizen has the right to keep and bear arms, and this right shall never be questioned." The wording of this article is stronger than in the Bill of Rights. This particular amendment will be discussed in more depth later. States can give greater constitutional protections to its citizens, but they cannot take away or restrict rights guaranteed in the federal constitution.

Chapter One Discussion Questions:

Explain what makes the language of the Bill of Rights legally binding.

Who was the main author of the Bill of Rights?

List some rights guaranteed by the Bill of Rights.

Chapter Two

Our Constitution — An Outline for a Government

Students will be able to:

- *define the three branches of government.*
- *explain how the state court and the federal court are similar and different.*
- *explain how cases get to the Supreme Court.*

VOCABULARY (Words are defined in the glossary):

Executive	**checks and balances**	**interpreting**
Judicial	**Congress**	**appellate**
jurisdiction		

The government set up under the Articles of Confederation after the Revolutionary War was too weak. The colonists wanted a stronger government, but they did not want it to be too powerful.

Representatives were sent to a Constitutional Convention in Philadelphia. They developed and wrote the Constitution as it is today. The Constitution defines the powers and responsibilities of those people who govern the country. The authors of this new document decided to have three branches of government. One branch, the **Executive**, would include the President and those people who work for the President. They would be responsible for enforcing or carrying out the laws. Another branch would be the **Legislative** which would be divided into two parts, the Senate and House of Representatives. Together these two parts would be known as Congress. Congress would be responsible for making the laws. The final branch would be the **Judicial**, made up of the Supreme Court and the federal courts. They would be responsible for interpreting the laws based on the Constitution. This is called the power of judicial review.

At the time the Constitution was written, the division of power defined in the U.S. Constitution was unique. The authors of the Constitution were careful that no one branch of government had more power than the other. There are "checks and balances" included, but there were no guarantees of personal freedoms or a Bill of Rights.

The Legislative Branch (Senate and House of Representatives) can make laws. When the laws are passed, they are sent to the President or the Executive Branch for approval. Once a law is approved, the Executive Branch is responsible for enforcing the law. If a group or an individual questions a law, they may challenge it through the Judicial branch. The Supreme Court may review the law and decide if it is constitutionally correct.

An example would be the flag burning case explained in Chapter Four. A man challenged a state law by burning the American flag. The Supreme Court found in his favor calling the demonstration symbolic speech. Congress (Legislative Branch) passed a law prohibiting flag burning. The President signed it. The Supreme Court reviewed it and found it unconstitutional. No one branch — Legislative, Executive or Judicial — has more power than the other. Each could have a say with the final review through the Court.

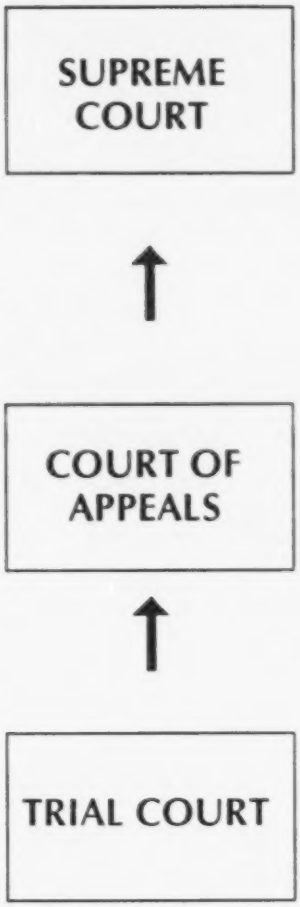
The Federal Court System

The federal court system is made up of three levels. The first level is the trial court. It is called the federal district court. The federal court in Maine is the U.S. District Court for the District of Maine, with a court in Portland and one in Bangor. Cases are tried, which means evidence is presented and witnesses are heard, either by a judge alone or by a judge and jury. The case is decided in the trial court. Someone wins and someone loses. The decision of the trial court can be appealed to a higher court.

The next level in the federal system is the U.S. Court of Appeals. The First Circuit Court of Appeals sits in Boston, and is the federal appellate court for Maine. The Court of Appeals will review the decision of the trial court to see if the judge applied the law correctly. The appellate court does not hear evidence, but only lawyer's arguments about the legal issues in the case. The Court of Appeals will either uphold the decision of the trial court, or overturn it. A party who is not satisfied with the court's opinion may petition the U.S. Supreme Court to accept the case for review.

The Supreme Court is the highest court in the land. About 5000 cases per year are submitted to the Supreme Court. Less than 200 will be heard. The Court only hears those cases which deal with important questions of federal law. Its decisions are final.

The Federal Courts



The Maine Court System

The Maine court system is made up of state courts as well as the federal courts. At the state level, there are three types of courts in Maine. The first are called "courts of limited jurisdiction." They have the power to decide only certain kinds of controversial cases. There are no juries in these courts. There are three kinds of courts of limited jurisdiction in Maine: District Courts, Probate Courts, and the Administrative Court.

The **District Courts** are the trial courts for most cases in Maine and most criminal cases. For example, most divorce, child protection, domestic abuse, and less serious criminal cases are decided in District Court, as are small claims and juvenile cases.

There is one **Probate Court** for every county in Maine. The judges decide cases involving wills and estates, adoptions, name changes, and guardianships.

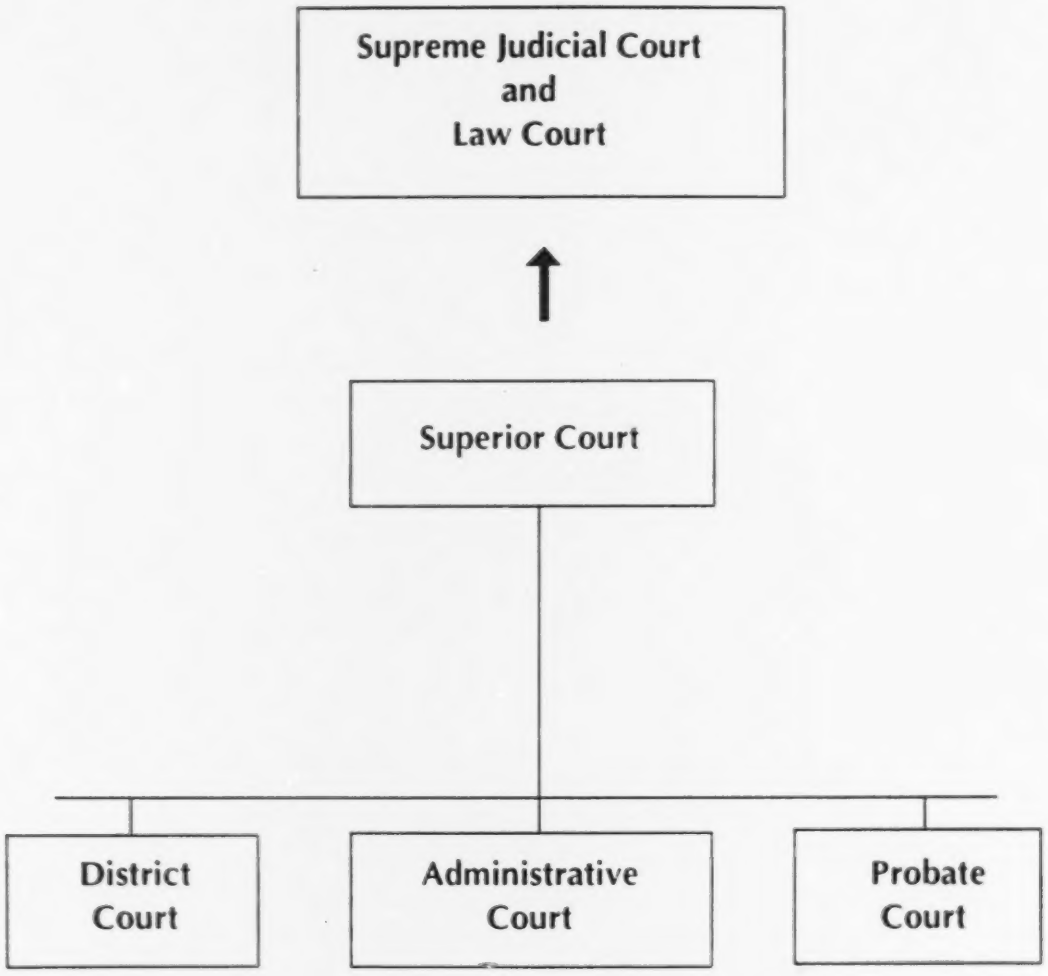
The **Administrative Court** has two judges for the entire state. They decide cases involving the actions of various state government agencies.

The second level of state courts are the **Superior Courts**, which are courts of general jurisdiction. These courts have the power to decide any type of civil or criminal case. There is one Superior Court for each of the sixteen counties in Maine. The judges hear the more serious cases, and civil and criminal trials may be conducted with a jury. Superior Courts also serve as the first appeals court for decisions made by the District Court and Administrative Court judges.

Some cases are further appealed to the third and highest level court in Maine — the **Supreme Judicial Court** and **Law Court.** This court, located in Portland, is called the Law Court when hearing appeals from civil and criminal trials in the lower courts. Probate Court decisions are appealed directly to the Law Court. The Law Court does not conduct a new trial of the case. But because it explains the law and how it applies in particular situations, the Law Court is an important source of law in Maine. Certain decisions, such as those involving federal and Constitutional law, may be further appealed to the U.S. Supreme Court.

State courts may be asked to interpret the Maine Constitution as well as the United States Constitution. The Law Court generally has the final say on interpreting the Maine Constitution.

The Maine Courts



Chapter Two Discussion Questions:

What is unique about the way the United States government is set up?

Explain the checks and balances.

Have you ever had to go to court? By the diagrams and explanations, place which court system you were in.

Chapter Three

From Revolution To Rights

Students will be able to:

- *define rights.*
- *identify early documents which influenced the development of the Bill of Rights.*
- *describe the roles of Madison and Mason in the development of the Bill of Rights.*

VOCABULARY (Words are defined in the glossary):

document **amendments** **ratify** **principle**

Habeas Corpus

The Bill of Rights has its roots in several documents written many years ago in England and America.

In 1215 the Magna Carta (Great Charter) was signed by King John of England. The Magna Carta guaranteed certain rights. It also established the principle that the government's power is not supreme. Of the twenty-seven rights listed in the Bill of Rights, four can be found in the Magna Carta.

In 1679 England passed the Habeas Corpus Act guaranteeing the writ of *habeas corpus*. This assures that when a person is held in custody, the courts must say why that person is being held.

King William III and Queen Mary II of England signed the English Bill of Rights in 1689. The English Bill of Rights protected the citizen's right to own property, to speak and write freely and to have fair treatment when accused of crimes. Two of the American Bill of Rights can be found in this document.

The colonists who settled America wrote bills of rights and constitutions to guide the governments they set up in this new country. New York, New Hampshire, Connecticut, Pennsylvania, Maryland and Massachusetts all had documents guaranteeing certain rights. (See list at end of Chapter for documents and dates. Note that many of these were written long before the American Revolution or the English Bill of Rights.) The

Massachusetts document had all but four of the twenty-seven rights found in the Bill of Rights.

The documents written by the colonists were influenced by a strong respect for people as individuals, a sense of fairness, a sensitivity to human relationships and the Bible. Everyone was viewed as being equal. No one had greater rights than anyone else. There was a basic belief that the government had to rely on the consent of those being governed.

Another fact which influenced the early writing of bills of rights was that the colonists lived in scattered locations up and down the coast. If they were to survive, they had to cooperate with each other. Military or dictator types of governing systems would not work. The charters and laws included bills of rights which insured cooperation, order, stability and economic progress.

The need for economic production rather than political control was another factor in the early bills of rights. The colonists needed to produce goods for England. They were given much freedom to run their own lives and set up governments which met their unique needs.

Individual state governments were set up during the 1600's and 1700's. In 1776 the Declaration of Independence was signed and the American Revolution began. When the Revolution ended in 1783, a weak federal government was set up under the Articles of Confederation. The Articles of Confederation had a very weak national government and the states were very strong with many powers. There was no provision for individual rights in the Articles of Confederation. Eventually, the Articles of Confederation caused many problems and people began to ask for a new charter for governement. This government lasted for several years until the United States Constitution was signed in September 1787.

One of the major drawbacks of the original Constitution was that there was no Bill of Rights included. Many states objected to this omission. They refused to ratify the Constitution unless it had a Bill of Rights included in it. Two men were responsible for the eventual inclusion a Bill of Rights with the Constitution. They were George Mason and James Madison.

George Mason was from Virginia. He was the main author of the Virginia Declaration of Rights in 1776. He was a delegate to the Constitutional Convention where the United States Constitution was written. He was not happy that the delegates did not include a Bill of Rights with the Constitution. Because there was no "Declaration of Rights," Mason refused to sign the Constitution. He, instead, wrote a paper outlining his objections. His paper began, "There is no Declaration of Rights." He circulated his paper throughout the United States. He sent it to Thomas Jefferson in Paris. Jefferson wrote to

several of his friends in America urging them to reconsider the addition of a Bill of Rights. He even suggested that when nine states had adopted the Constitution, the remaining four should not adopt the Constitution until a declaration of rights had been included. In fact, this is exactly what happened. Massachusetts, New York and Virginia would not ratify the Constitution until a promise was made to include a Bill of Rights. North Carolina and Rhode Island did not approve the Constitution until the amendments were actually ratified.

James Madison, one of the authors of the Constitution, was not a strong supporter of a bill of rights. He was not especially interested in individual freedoms and liberties. His friend, Thomas Jefferson, wrote to Madison that the people were entitled to a Bill of Rights. Eventually, Madison agreed with the many other people who thought that a Bill of Rights would be an important addition to the Constitution. He agreed that if he were elected to the first Congress, he would write a Bill of Rights. After his election, Madison wrote a Bill of Rights. He included the rights which George Mason considered to be so important. Madison presented his copy to the first Congress for approval in June 1789. The amendments were approved and sent to the thirteen states for ratification. Virginia ratified the Bill of Rights on December 15, 1791 and it became part of the Constitution. James Madison is considered to be the "Father of the Bill of Rights" because he wrote them.

Thomas Jefferson, when he wrote the Declaration of Independence, talks about "certain inalienable rights" including "life, liberty and the pursuit of happiness" — and that the purpose of government is "to secure those rights." Jefferson is referring to natural rights in those statements.

Natural rights are those rights that a person has at birth. These rights do not come from the government; therefore, government cannot take them away, but the government must protect these rights.

Legal rights are rights created and protected by the government. They are found in the laws, statutes and court decisions of the government.

A right is defined as a power or privilege that a person has claim to. A right belongs to the person by law, nature or tradition.

Some natural rights have become legal rights through the ratification of the Bill of Rights. The early Americans who wrote the Constitution and the Bill of Rights wanted to be sure that their rights were protected by law. Americans were cautious and concerned that unless their rights were written in law, those rights would not be protected. By having the rights protected by law through the Bill of Rights, American citizens can turn to the courts for a ruling if they think their rights have been abused.

Documents Influencing The Bill Of Rights

STATE/COUNTRY	DOCUMENT	DATE
England	Magna Carta	1215
Massachusetts	Laws and Liberties	1641
Maryland	Maryland Toleration Act	1649
Connecticut	General Laws & Liberties of Ct.	1672
England	Habeas Corpus Act	1679
William Penn	Charter of Liberties	1682
New Hampshire	Laws and Liberties	1682
New York	Charter of Liberties and Privileges	1683
England	English Bill of Rights	1689
	Declaration of Independence	1776
	U.S. Constitution	1787
	Bill of Rights	1791

Please note the dates on these documents. All of them were written many years before the Bill of Rights was drafted. The Bill of Rights was not just written on the spur of the moment. There was a long history of recognition of individual freedoms dating back several hundred years.

Chapter Three Discussion Questions:

Name some sources used for the United States Bill of Rights.

Who were George Mason and James Madison?

Explain the difference between natural and legal rights.

Chapter Four

Free Speech Gives Woman Voice

JoAnn Twomey left a Biddeford City Council meeting in handcuffs because she wanted to speak.

But that didn't keep her quiet.

She persisted. And in November - 14 months after her arrest - Twomey had the last word when Biddeford voters elected her to the Council. They also voted out the mayor who had her arrested.

Twomey was a vocal opponent of the regional trash incinerator in Biddeford. Her activism had its roots in the anti-nuclear campaign over 10 years ago. Twomey began speaking out for other environmental concerns.

She has learned what it is like to have enemies for holding unpopular opinions.

On August 7, 1990, Twomey stood before the Biddeford City Council and asked to speak about the incinerator. The mayor told her to sit down.

Twomey thought about it.

"I knew I could just sit still and let this happen again and again and again. Or I could stand tall and say, This is unconstitutional. This is against what I believe the Constitution to be."

Twomey insisted that the mayor let her speak. The mayor called the police. The police handcuffed her and arrested her. They charged her with criminal trespass. Later the charge was dismissed.

After she was elected to the City Council, Twomey said, "That was the jury trial I never had.

From the Portland Press Herald, December 9, 1991, reported by Alberta Cook

Editor Probes Mill Safety

In the early morning hours on a summer Sunday in 1990, someone hurled rocks and pieces of wood through 19 office windows of the Bucksport Free Press.

Terrilyn Simpson, the weekly paper's editor, had been probing suspicious illnesses at the local paper mill. Two millworkers had died and others were seriously ill. Some suspected the sickness was caused by exposure to toxic chemicals.

A few days before her office was vandalized, someone at the mill warned Simpson to be more careful where she went and how late she stayed at work.

She hasn't heeded the warning. Simpson continues to follow the story of millworkers' concerns over exposure to toxic chemicals at the paper mill.

Simpson is a single mother with two teenagers. She took over as editor and general manager of the Bucksport Free Press in July, 1989. She wanted the paper to take a "harder" news approach. She had no idea the mill story was waiting to be reported. She began hearing about health worries among mill workers and started investigating.

Gradually she uncovered evidence of chemical leaks, poor ventilation and worker sickness. The wife of a millworker who died said, "She had to hound and hound and hound to get answers."

Simpson's newspaper coverage has led to a federal investigation of worker safety at the mill. Workers have filed 35 workers' compensation cases related to chemical exposure. Her reporting and editorials have caused the mill owners to improve conditions at the mill. Simpson won the Maine Press Association's investigative reporting award for her efforts.

Simpson's bold reporting has given millworkers a voice and stirred environmental concerns. Recently a grass-roots environmental movement challenged the city council on its decision to build a coal-burning plant in the city.The efforts of this small town newspaper editor show how the First Amendment continues to protect the exchange of information and ideas in a free society.

From Portland Press Herald, December 10, 1991, reported by Joanne Lannin

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment I, United States Constitution

All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship; . . . and no subordination nor preference of any one sect or denomination to another shall ever be established by law . . .

Article I, Section 3, Maine Constitution

Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press. . .

Article I, Section 4, Maine Constitution

The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the public good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Article I, Section 15, Maine Constitution

Students will be able to:

- *list some of the rights and limits of the First Amendment.*
- *define "speech."*

VOCABULARY (Words are defined in the glossary):

desecration	**petition**	**symbolic**	**abridgement**
constitutional	**symbolic speech**	**unconstitutional**	

The First Amendment is probably the best known of the ten amendments of the Bill of Rights. It is the amendment that allows us to worship openly, speak freely, read many newspapers or magazines, to write letters criticizing government officials or actions or to protest for or against something in which we believe.

This amendment begins that "Congress shall make no law. . ." — not the state or local government. This means the federal government. After the Fourteenth Amendment was ratified in 1868, most of the Bill of Rights was then applied to the states. The Maine Constitution, passed in 1820, had already recognized the same rights as those protected in the First Amendment.

The Bill of Rights applies to actions of government, not private actions. A private individual may prevent you from saying something controversial or a business may decide not to sell certain magazines or newspapers. This would be legal because it is not an action of the government.

Freedom of Religion

Freedom of religion was very important to the colonists. Many of them left countries where they could not worship as they wished. It is the first freedom mentioned in the First Amendment, which indicates how important it was. Freedom of religion means that a person can worship or not worship as he or she pleases. The government cannot say that everyone must follow a certain religion.

There are two religion clauses in the First Amendment. The "establishment clause" prevents the government from setting up a state religion. School prayer cases are decided under this part of the First Amendment. The "free exercise clause" protects the rights of individuals to worship or believe as they choose. For example, Amish children in Wisconsin were allowed to leave school before age 16 to study the Bible at home and train in farm work. The Supreme Court said this was more important than two more years of required schooling. (Wisconsin v. Yoder, 1972.)

Freedom of Expression

The freedom of expression rights include freedom of speech, press, assembly and petition. Generally speaking, most speech (even "symbolic speech") is protected under this amendment. This includes even speech which we dislike.

A free press lets many different opinions to be published or aired. Citizens can make their own decisions based on the information heard. The press can criticize the government or an official without being shut down. However, the press cannot knowingly print false information.

Freedom of the Press has long been established. In 1735 Peter Zenger, the printer and publisher of the New York Weekly Journal, was acquitted of libel in a landmark trial. This happened 57 years before the Bill of Rights was ratified.

Freedom of assembly and petition allows citizens to gather together or to ask the government to solve certain problems. Gatherings must be for peaceful purposes and the government must show a need for any limitations to be placed. If the government wants to set limits on gatherings, it must have a good reason .

If we did not have freedom of speech, press, assembly and petition, we would not have enough information on important issues.

The First Amendment provides fundamental basic rights for all citizens. These rights are necessary for a democratic government. We may not agree with a person's religious beliefs or we may intensely disagree with a written, verbal or symbolic message. Our right to disagree is as well protected as a person's right to speak out or believe as they wish. The following cases are examples of the protections of the First Amendment.

Flag Burning as Free Expression
Texas v. Johnson
491 U.S. 397 (1989)

In 1984 Gregory Lee Johnson, a Vietnam veteran, was demonstrating at the Republican National Convention in Dallas, Texas. The demonstrators made speeches, marched and held a "die-in" against Reagan policies. An American flag was ripped from a flag pole and given to Johnson. He soaked it in kerosene and set it on fire. While the flag burned, the protesters chanted, "America the red, white, and blue, we spit on you." Afterwards, another person took the ashes of the flag and buried them in his backyard. No one was hurt or threatened. Many people were offended by what Johnson did.

Johnson was arrested, charged and convicted of violating a Texas law against flag desecration. The case went to the Supreme Court. They had to decide if his actions were the same as speech. If they were, did those actions fall under the freedom of expression amendment of the Bill of Rights?

The Supreme Court, in a split decision (a 5-4 vote), decided in favor of Johnson. The First Amendment forbids "abridgement of speech" (taking away of speech). Symbolic speech is given the same protection under the First Amendment's freedom of expression as are the spoken and written word. The underlying principle of the First Amendment is that the Government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable. Forcing our own political beliefs on citizens is forbidden by the First Amendment. The basic theme is that the flag (and by extension the freedom of expression right in the First Amendment) protects even those who hold it in contempt.

Flag Burning as Free Expression — Congress Acts
United States v. Eichman
496 U.S. 287 (1990)

After the Supreme Court's decision in Texas v. Johnson, Congress passed the Flag Protection Act of 1989. President Bush signed it into law. The law said, " Anyone who knowingly mutilates, defaces, burns, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both."

Soon afterwards, people in Washington, D.C. and Seattle, Washington were arrested for defacing the flag. Everyone arrested asked the courts to dismiss their cases. They said the Flag Protection Act violated the First Amendment. District Courts in Washington state and the District of Columbia did dismiss their arrests. The Government appealed and the case went to the Supreme Court.

The Supreme Court ruled, in a split decision, that the Flag Protection Act of 1989 was an unconstitutional restriction on free expression. Flag burning is considered a "mode of expression" and is protected by the First Amendment. The Government cannot legislate or ban expressive conduct because the message is a disagreeable one to some people. As stated in the decision, "Punishing desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering."

Book Banning
Scheck v. Baileyville School Committee
530 F. Supp. 679 (D. Me. 1982)

In a Maine federal court decision, what many considered offensive speech was protected. A public school library had a book about the Vietnam War called 365 Days. The soldiers' language in the book was pretty down and dirty. It contained some strong and, to some people, very offensive language. The mother of a student who checked out the book objected to the book. She got the School Committee to take the book off the library shelves. Even possession of the book in the school was forbidden. The book banning was challenged and the case was decided by the federal district court in Maine. The federal judge decided that the school could not ban the book because it did not apply appropriate standards in making its decision. The Court said, "The right to receive information and ideas is nowhere more vital than in our schools and universities. ... Public schools are major marketplaces of ideas, and First Amendment rights must be accorded all persons in the market for ideas...." The Constitution and the Bill of Rights protects speech even when it is unpopular, controversial or offensive.

The Right to Peaceably Assemble
How "Peaceable" Must it Be?
Skokie v. National Socialist Party of America
69 Ill. 2d 597 (1978)

In Skokie, Illinois, the National Socialist Party of American applied for a parade permit. The National Socialist Party is the American Nazi Party. Skokie, Illinois is more than half Jewish. About 15% of the residents are survivors of the Nazi concentration camps. Clearly, there was much disagreement about allowing the parade by this particular group and whether it would be considered "peaceable."

Jewish Nazi holocaust survivors testified that the Jewish community felt the purpose of the parade was to remind the survivors that "we are not through with you and that the Nazi threat is not over, and it can happen again "

The Court decided that the parade must be allowed to take place. Our Constitution guarantees that the public expression of ideas may not be prohibited just because the ideas are offensive to some of the hearers. As long as the means are peaceful, the communication need not meet standards of acceptability. Anticipation of a hostile audience cannot justify forbidding the parade permit.

The right to assemble is almost always tied to the right to freedom of speech. Most gatherings involve either spoken or symbolic speech. The right to peaceably assemble is one that the government may limit. There has to be a good reason such as the likelihood of actual physical harm. The Supreme Court and state supreme courts have had to define what is peaceable.

What Happens When a Newspaper Hurts Your Reputation?
A Free Press and Libel - The *National Enquirer* Cases

The First Amendment protects free speech and a free press, so that citizens will have full and accurate information in the marketplace of ideas. But what happens when a newspaper or magazine hurts your reputation by something it prints about you? One of the exceptions to an absolutely free press is known as slander or libel. This is personally harmful, untrue spoken or written speech. A landmark Supreme Court case involving the New York Times set the standard for deciding when libel has occurred. The case was called New York Times v. Sullivan. For a person to win a libel suit, he or she must show:

- that the statement was made about him or her;
- that it was "published," or not made privately;
- that it was not true;
- and that it hurt his or her reputation.

The standard is higher for a public figure, who must show the untrue statement was made with "actual malice." That is, the statement was made knowing it was false or reckless; or the person who made it did so without caring about whether it was false.

This standard was applied in several cases involving the National Enquirer, the popular tabloid which often features sensational stories about public figures. In one case a reputed crime figure was dating Elizabeth Taylor. The National Enquirer published a story reporting the opinions and feelings of Miss Taylor's business manager about the relationship. He reportedly said that Wynberg, the crime figure, was using Miss Taylor for his own financial gain. The U.S. Court of Appeals in California dismissed the case, saying that the business manager's statements were either opinions or true, and there was no actual malice in printing his statements.

In another case the singer Engelbert Humperdinck received this headline in the Enquirer: "Mother of His Child Claims in Court...Engelbert has AIDS Virus." The headline and story were based on family court proceedings. His former girlfriend sought additional child support and life insurance for their daughter because she believed Humperdinck had AIDS. The story also quoted her private investigator stating that he believed Humperdinck had been treated for AIDS. His belief was based on intensive investigation of the singer over five years. Humperdinck denied the story and sued. The U.S. Court of Appeals in California dismissed the suit. The Court said the statements

were based on court documents and fairly represented what those court documents said. The Court reasoned that the media do not have to justify every word they print, but make sure that the "gist or sting" of the report - its very substance - is accurate. By this standard the report was true.

The courts vigorously protect a free press and hold those who feel their reputation has been harmed to a high standard. It is difficult, especially for a public figure like a rock star or even a crime figure, to show the untruth of printed reports and irresponsible reporting. Tabloids know how to walk the line between stretching the truth and printing lies. Since a free press is so essential to our democracy, the courts have balanced the need for freedom of expression, no matter how controversial or even offensive, against the citizen's right to privacy and a good reputation. Libel cases continually test this balance.

Saying Amen: Public School Graduation and the First Amendment

Weisman v. Lee
908 F.2d 1090 (1st Cir. 1990)

Does the First Amendment ban public school officials from inviting a local religious leader to offer an invocation and benediction at graduation exercises? In Providence, Rhode Island, Deborah Weisman and her father decided to test this question.

The Providence, Rhode Island School Committee and Superintendent have permitted principals to include invocations and benedictions in the graduation ceremonies of the middle and senior high schools. These invocations and benedictions are not written or given by public school employees, but members of the clergy are invited to participate in the ceremony for this purpose. The clergy have guidelines to follow which stress sensitivity in the use of nonsectarian prayer for public civic ceremonies. Clergy have included various Christian ministers and priests and rabbis.

Attendance at the graduation ceremonies is voluntary with parents and friends of the students invited to attend.

Deborah Weisman was graduated from Nathan Bishop Middle School, a public school in Providence in June 1989. Rabbi Leslie Gutterman delivered the invocation and benediction at the ceremony.

On June 16, Mr. Daniel Weisman, Deborah's father, asked the local federal court to issue an order that would have stopped public schools from including invocations and benedictions at graduations. Mr. Weisman contended that by providing invocations and benedictions at public school graduations the separation of church and state required by the First Amendment was violated.

On June 19, the court denied the motion because they did not have enough time to consider it before the graduation. On June 20, Deborah attended the ceremony and heard the invocation and benediction. In July 1989, Mr. Weisman returned to the court with an amended complaint. The trial court ruled in his favor, issuing an order barring inclusion of public prayer by religious leaders in public school graduation ceremonies. That decision was upheld on appeal.

In June 1992 the United States Supreme Court in a split decision (5-4) upheld the decision of the appellate court to ban public schools from including prayers in graduation ceremonies.

Church and State Cases: Tests the Justices Use

There are tests used to decide the church/state cases. They are as follows.

The Lemon Test

In 1971 the Supreme Court decided a case (Lemon v. Kurtzman) where the justices set out a three-part test to determine whether a government law or action meets the requirements of the establishment clause:

1. The challenged law or government action must have a nonreligious purpose.

2. The primary effect of the law or action must be to neither advance nor inhibit religion.

3. The operation of the law or action must not foster excessive entanglement of government with religion.

This test has been used in almost every establishment clause case decided in the past twenty years.

The Endorsement Test

Justice O'Connor set forth the endorsement test in Lynch v. Donnelly (the 1984 Pawtucket, Rhode Island Christmas creche case). This test asks whether the challenged law or government action has either the purpose or effect of endorsing religion in the eyes of the members of the community. For example, has the government sent a message to nonbelievers that they are outsiders and not full members of the political community? If the government has done this, the action would be declared a First Amendment violation under the endorsement test.

The Coercion Test

In a few recent cases, Justice Kennedy has said that he would uphold governmental involvement with religion unless it directly or indirectly coerces people to support or participate in religion or gives benefits to religion so much that it establishes a state religion. It is generally agreed that use of this test would allow greater government involvement in religion. For example, the passive display of religious symbols by the government during the Christmas season would not violate the coercion test. This test has not yet been adopted by the majority of the Supreme Court.

Chapter Four Discussion Questions:

What is freedom of speech?

How is speech defined?

What is freedom of religion?

Why do you think the freedoms in the First Amendment are so important to Americans?

Chapter Five

Hunter Advocates Gun Rights

Michael Lee loves to spend the day in the woods with his three English pointers hunting grouse and woodcock. His passion for hunting is matched by his commitment to defending the rights of law-abiding citizens to own guns. Lee is one of Maine's most vocal advocates of gun rights.

Lee's weapon in this fight is the Second Amendment of the Bill of Rights. He uses it to battle the state's growing gun control movement.

The meaning of the Second Amendment's guarantee of the right to bear arms is at issue every time laws are passed to regulate handguns.

Gun control advocates, like Portland's Police Chief Michael Chitwood, say it's a public safety issue. Chitwood says the writers of the Second Amendment did not live in a society where 20,000 people are killed in our cities every year. Most are killed by guns.

The Maine Supreme Court has upheld gun permits and laws preventing criminals and the mentally ill from owning guns. Lawmakers continue to debate stricter rules, such as waiting periods and bans on some types of guns.

Lee says tighter rules would only end up violating the rights of the wrong people. He says, "What is wrong with an individual owning a gun to protect himself and his family and his freedoms?"

This debate will continue nationally and in Maine. Maine has a strong hunting tradition. Advocates like Lee and Chitwood will speak out with their views on what the Second Amendment means.

From Portland Press Herald, December 11, 1991, reported by Jason Wolfe

Second Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment II, United States Constitution

Every citizen has the right to keep and bear arms, and this right shall never be questioned.

Article I, Section 16, Maine Constitution

Students will be able to:

- *discern between a collective versus an individual right.*
- *list reasons why the Second Amendment was included in the Bill of Rights.*
- *defend a position, either for or against, for an individual to bear arms.*

VOCABULARY (Words are defined in the glossary):

bear	**felon/felony**	**regulation**	**statute**
absolute	**collective right**	**militia**	**standing armies**

When the Bill of Rights was written in 1789, almost all Americans owned guns. They used guns for hunting to provide food for their families. As people moved west into frontier territory, they needed guns to defend themselves. Individual gun ownership was something which was taken for granted.

Americans included the Second Amendment for two reasons or fears. The first was a fear of standing armies. They had just fought the Revolutionary War against the standing army of the British. After the war, Americans wanted a standing army only in extreme circumstances. They wanted tight civilian control over any standing army. During normal times, Americans felt safer with state militias. (State militias are like the National Guard.)

The second fear was over the power the federal government was given in the Constitution to control state militas. The Constitution gives Congress the power to call out the state militias when needed for the defense of the nation. Congress can organize, arm and discipline the state militias. The Second Amendment would protect the people against seizure of power by the federal government.

There is often a lot of argument over the Second Amendment. The arguments are based on two different theories. One theory is that the right to bear arms is a collective right. That is, it is a right held by all the citizens of the state, as a group. In other words, the Second Amendment protects the rights of the states to have militias. This amendment is the only one where the purpose is explained. The right to bear arms is limited to the need for "a well regulated Militia" and "the security of a free State." It guarantees an armed militia to defend the community, not for individuals to carry weapons for whatever purpose.

The other theory about the Second Amendment is the individual one. Using the words "the right of the people," these are the same words as in the First, Fourth and Ninth Amendments. These words refer to individuals, not the states. Also, the militia, in colonial times, consisted of the body of the people.

Even though the Second Amendment is an emotional one, it has not been important in Constitutional law. The Supreme Court has ruled several times that the right to bear arms is a collective right. It applies only to state militias. The Court has rejected the individual-rights point of view. If the right to bear arms is a collective one, then governments (both state and federal) may pass laws limiting the kinds of weapons people may own.

No federal court has ever decided that gun control laws violate the Second Amendment. As recently as 1991, the Supreme Court refused to hear a case challenging a federal law against the sale or purchase of machine guns. When the Supreme Court refuses to hear a case, that means that the lower court ruling stands or stays as it is. The Supreme Court also refused to hear the appeal of Quilici v. Morton Grove. Morton Grove is the first town in America to outlaw the ownership of guns for any reason except for police officers, members of the armed forces and security guards. By refusing to hear the case the Supreme Court upheld the lower court ruling that the Second Amendment applied only to the federal government, not the states and local communities.

The Second Amendment has never been incorporated against the states. That is it has never been applied to the states like the other amendments have. In a 1939 decision the Supreme Court said the Second Amendment is a check against the powers of Congress not the states.

What is interesting is that many state constitutions protect a citizen's right to bear arms. The Maine Constitution originally had the words "for the common defense" in it. In 1987 those words were taken out and Maine now has a very clear statement about an individual's right to bear arms. It is one of the broadest statements about the right to bear arms in the entire country.

The question arises — does everyone, even convicted felons, mentally ill people or inmates of prison have a right to bear arms? The next two cases are from decisions of the Maine Supreme Judicial Court.

State v. Friel
508 A.2d 123 (Me. 1986)

Dennis Friel was a well-known convicted felon. In 1986 Friel was charged with possession of a shotgun and a revolver. State law required him to have a permit. He had none. Friel argued that the U.S. and Maine Constitutions protected his right to possess firearms. His case went to the Maine Supreme Judicial Court.

The Maine Supreme Court ruled that the U.S. Constitution did not apply. The Second Amendment applies only to the power of the federal government. It does not restrict the power of the states to regulate firearms.

This case came before the Court in 1986 when the Maine Constitution still had the words "for the common defense" in it. The Court decided that the right was limited by its purpose — "for the common defense," and that the common defense would not be served by a convicted felon.

There was also a state statute which restricted or denied possession of a firearm by a convicted felon. Again, the Court determined that the common defense would not be served by allowing "every citizen" the "right to bear arms" without question.

State v. Brown
571 A.2d 816 (Me. 1990)

One year after the Friel decision, the Maine Constitution was amended to eliminate the phrase "for the common defense." The Maine Supreme Judicial Court was again faced with a decision concerning a convicted felon owning a gun.

Brown, convicted of the felony of being an habitual traffic offender, got a gun and was charged with violating the "felon with a gun" law. He argued that the new wording of the Maine Constitution absolutely guaranteed his right to own a gun. The Legislature could "never question" that right. He also said that no restrictions on his right to own a gun should be placed on him because he was convicted of a nonviolent felony.
At Brown's trial, the judge ruled that the State could not prohibit a non-violent felon from possessing a firearm. The State appealed the decision and the case went to the Maine Supreme Court.

The State of Maine had a criminal statute (law) which prohibited the possession of a firearm by a convicted felon. The Supreme Court had to rule on the constitutionality of that statute in relation to the amended Maine Constitution.

The Justices ruled that the purpose of the amendment to the Maine Constitution was to change a collective right ("the common defense") to bear arms into an individual right. But the rights granted prior to 1987 could be restricted, based on earlier case law. (In the Friel case, the statute stood as it was stated.)

The Maine Supreme Court also used a common sense guideline to determine that, in fact, the people of the State of Maine did not intend for a prison inmate or a patient at a mental hospital to have a gun. Common sense requires that the state can reasonably regulate the constitutional right to own firearms.

Laws preventing the owning of firearms by convicted felons have always been upheld. It does not matter the nature of the felony. Even though Brown was a convicted felon of a non-violent crime, he showed a complete disregard of the law. And denying him the right to own a firearm is reasonable and in keeping with the exercise of police power for the public safety.

Chapter Five Discussion Questions:

Think about the time in history when the Bill of Rights was written. Why do you think the Second Amendment was included?

Why was it considered to be important?

Explain the difference between a collective and an individual right.

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Chapter Six

Police Searches a Tricky Issue

Officer Lisa Coburn starts work at 11 p.m.

By 7 a.m. the next morning, she will have dealt with drunks, burglars and wife-beaters. They all have rights.

In fact, many will claim to be experts on their Fourth Amendment rights. The Fourth Amendment has become the modern police officer's code of conduct.

Coburn sees a car turn at a "No Turn on Red" corner without fully stopping. She lets the driver off with a warning. But while questioning him, she shines her light in and around the car.

She cannot simply open the car doors and search. But if she sees beer cans or drugs in "plain view," she can search the car without a warrant.

Around midnight, Coburn and another officer are sent to an apartment. A mother has asked for help in ejecting her daughter's two teenage friends. The police need the mother's consent to enter the apartment.

Even after the officers are inside, they would need a search warrant

if they saw cocaine on the table and want to look around.

"The procedure would be to secure the premises, arrest the people who had access to the drugs, get the warrant and search it all," Coburn said.

Later Coburn stops a car that has blown through a red light. Records show the man's license has been suspended. He also has three outstanding arrest warrants.

The man does not protest when Coburn says he is under arrest. She tells him to put his hands on the car and pats him down. She is searching for weapons.

The officer assisting in the arrest searches the car. He finds some clothes and four watches in a plastic bag. The officers suspect the watches are stolen. But they cannot search the trunk of his car without a warrant.

The rules by which police officers operate today are complex. They change often with new court rulings. Maine police departments are updated frequently by the Attorney General after court decisions in search and seizure cases.

From Portland Press Herald, December 12, 1991, reported by Martha Englert

Presumed Innocent

Glen Stimson leaned on the railing in the front of the courtroom. He tried to interrupt the judge who was explaining the charges against him.

"May I give you an explanation?" Stimson asked.

"Please, no," said the judge, raising his voice and waving his arm. "It could be used against you. On February third you can explain everything you want."

The judge was doing his job, protecting Stimson's right to remain silent.

Every day in Maine courts, defendants answer charges, challenge the state's accusations, go to trial or plead guilty.

Along the way, a long list of rights is triggered. Those rights are provided under the Fifth and Sixth Amendments of the Bill of Rights.

At the heart of these rights is a simple assumption. A person is innocent until proven guilty.

The protections are the same, no matter how serious the crime. A Portland defense attorney, Jim Bushell, says, "It is obvious and evident how the state imposes its power on an individual. There are certain rights which limit the power of the state."

Judges make a special effort to be sure defendants understand these rights.

Later that morning, Judge Alexander MacNichol was hearing charges against Christopher Camara. This case posed a new problem: Camara was deaf. MacNichol found a court clerk who used sign language to help Camara understand his rights.

"He says he didn't do it," the clerk said. So MacNichol entered a not guilty plea. He also got him a free lawyer because Camara could not afford a lawyer.

Many defendants trade some of their rights for a negotiated sentence, called a "plea bargain." They plead guilty in exchange for a lesser sentence. They decide not to take a chance of getting a tougher sentence if a jury found them guilty.

Judges take special care to be sure the guilty plea is voluntary.

One judge says, "The object of proceeding through this series of rights is to ensure a person is not unjustly accused of a crime. With a plea of guilty, you are giving up all those rights that were designed 200 years ago to protect individuals."

From Portland Press Herald, Dec. 13, 1991, reported by Alberta Cook

Fourth, Fifth, Sixth Amendments

Students will be able to:

- *define rights as applied to criminal cases.*
- *describe proper procedure for a search by police both with and without a warrant.*
- *explain the "exclusionary rule."*
- *explain the Miranda rights.*
- *list the rights guaranteed in the Sixth Amendment.*

VOCABULARY (Words are defined in the glossary):

probable cause	**warrant**	**indictment**	**due process**
self-incrimination	**impartial**	**obscene**	**controversial**
exclusionary rule	**randomly**	**confront**	**jeopardy**
prosecutes	**consequences**	**incriminate**	**informant**
represent			

Fourth, Fifth, Sixth Amendments

The Fourth, Fifth and Sixth Amendments are the primary amendments that guarantee rights in criminal cases.

The Fourth Amendment guarantees a person's right to be left alone. Occasionally the right to privacy is in conflict with the government's need to catch criminals. The Fourth Amendment guarantees that people are free from unreasonable searches and seizures. Warrants for searches can only be issued with probable cause (for a good reason). The warrants must be specific and describe what is to be searched and what is to be taken.

Interpretation of the Fourth Amendment has often been on a case-by-case basis. Because of the various interpretations, searches and seizures are sometimes complicated issues for police officers. The rule that excludes illegal evidence from court (exclusionary rule) and some exceptions will be discussed later.

The Fifth Amendment is very broad. This amendment along with the Fourth, Sixth and Eighth Amendments protect the rights of people accused of committing crimes. The right to remain silent is probably one of the best known of the constitutional rights. That right is guaranteed by the Fifth Amendment.

The Fifth Amendment guarantees five different rights: the right to have a grand jury indictment for federal crimes; the guarantee that a person will be tried only once for the same crime (double jeopardy); the right not to testify against yourself (self-incrimination); the right to be treated fairly by the government (due process); and the right to be paid fairly for private property taken for public use.

The Sixth Amendment guarantees a fair trial and actually lists the parts of a fair trial: that it be speedy and public; that it be conducted by an impartial and local jury; that the accused be informed of the charges; and that the accused have the services of an attorney for their defense.

The following pages will review some important decisions concerning these rights and provide more information on each individual amendment.

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment IV, United States Constitution

The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place or seize any person or thing, shall issue without a special designation of the place to be searcher and the person or thing to be seized, nor without probable cause - supported by oath or affirmation.

Article I, Section 5, Maine Constitution

The Fourth Amendment provides protection for citizens against unreasonable searches and seizures. We Americans have always valued our privacy. We expect to be left alone, to be secure in our own homes, and to be free from snooping or spying by the government. These expectations are protected by the Fourth Amendment. It also guarantees that arrest and search warrants can only be issued for "probable cause." Probable cause means that there is good reason to believe a crime has been committed and that a search must be done to find evidence.

Balanced against the individual's expectation of privacy is the government's need to gather information. For instance, the police need to collect evidence against criminals and to protect all of us against crime. The Fourth Amendment does not forbid all searches and seizure, only those that are unreasonable. In general, courts have held that searches and seizures are unreasonable unless authorized by a valid warrant. However, search and seizure law is complex. There are some cases when a search may be done without a warrant. A person may consent to a search without a warrant. If the person says yes, then the search may be done.

Otherwise, searches without warrants may only be conducted in emergencies such as:

- evidence might be destroyed or a life lost;
- a fugitive is fleeing and the police are in pursuit;
- police have made a legal arrest and then search the person arrested;
- a car has been stopped and there is cause to believe that it contains illegal objects;
- evidence of a crime is in "plain view" of the police officer whether an arrest has been made or not.

Courts look at the law on a case-by-case basis, balancing the values protected by the Fourth Amendment with the government's need for the information.

If a court finds that the search was unreasonable, then evidence found in the search cannot be used at trial against the accused. This principle, called the exclusionary rule, does not mean that the accused cannot be tried and convicted. It does mean that unlawful evidence cannot be used at trial.

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The Exclusionary Rule
Mapp v. Ohio
367 U.S. 643 (1961)

In a 1914 case, Weeks v. United States, the U.S. Supreme Court decided to keep out of court or exclude all evidence that was found in an unconstitutional search. This became known as the "exclusionary rule." It applied to the federal government and encouraged the government to use search warrants. The states and local police were not required to keep evidence that was illegally seized out of court.

Dollree Mapp and her daughter lived on the top floor of a two-family house in Cleveland, Ohio. In 1957, police officers went to her house saying that they thought someone wanted by the police was hiding in the her house. Mrs. Mapp called her lawyer and he told her to ask to see a search warrant. The police did not have one. They called the police station and then waited outside her house.

Mrs. Mapp observed the police officers watching her house. She called her lawyer again and he told her not to let the police in unless they had a search warrant. He would be right over.

A short while later extra police showed up and forced their way into her house. They waved a paper in front of her saying it was a search warrant. Mrs. Mapp grabbed the warrant and stuffed it down the front of her dress. After a struggle, the police officer got the paper back and handcuffed Mrs. Mapp.

They searched all the rooms in Mrs. Mapp's home. Finding nothing, they went to the basement. There they found some obscene materials which had belonged to a former tenant. They took the material as evidence and arrested Mrs. Mapp for possessing obscene materials.

At the trial, Mrs. Mapp was convicted of possessing obscene materials. A search warrant was never shown. The failure to have a search warrant was never discussed. She appealed the decision to the Ohio Supreme Court which ruled that there "was considerable doubt as to whether there ever was any warrant." They upheld her conviction because the exclusionary rule did not apply to the states.

The Mapp case reached the U.S. Supreme Court in 1961. The Court ruled that the evidence illegally seized from her home should not have been used in the trial. For the first time, the Court applied the exclusionary rule to the states. Without that evidence, the state had no case. Dollree Mapp was a free person.

The exclusionary rule is a controversial one. This rule does require that police departments carefully train police officers on how to conduct a legal search. There have

been many exceptions to it decided by various courts. At the heart of controversy over the Fourth Amendment is the people's right to security and privacy versus the need for obtaining convincing evidence to convict criminals.

Searches with a Warrant

A search warrant is a court order. It must be gotten from a judge who is convinced there is a real need to search a person or place. Usually a police officer appears before the judge and testifies under oath to the facts which justify the warrant. This is called probable cause. If the judge issues a warrant, it must specifically describe a person or place to be searched and the particular things to be seized. The warrant cannot be a vague or general description, but must describe in specific detail what is to be searched.

Once issued, the warrant must be used within a limited period of time, such as 10 days. A search warrant does not necessarily allow police officers to search everything in the specified place. For example, if police are looking for a stolen TV set, it would be unreasonable to look in desk drawers, envelopes, or other small places where a TV set could not be hidden.

Exceptions: Warrantless Searches

Courts have determined a number of exceptions to the need for a search warrant. Some examples follow.

The police suspected Billy Greenwood was involved in dealing drugs. They had observed many vehicles making brief stops at his house late at night. The police did not have enough evidence for a search warrant. However, police asked the garbage collector to pick up the plastic garbage bags that Greenwood left on the curb. Once the police had the garbage bags, they found evidence of narcotic use. They then got a warrant to search his house. They found quantities of illegal drugs. Greenwood was arrested and convicted. His case was appealed to the U.S. Supreme Court (California v. Greenwood, 1988). Greenwood argued the police had no right to search his garbage bags. The Supreme Court disagreed. The Court said that the police had a right to search the garbage bags because Greenwood had no expectation of privacy. He left the bags at the curb and animals, children, scavengers or others could get into them. The police could also search them to obtain evidence.

Does the Fourth Amendment apply in schools? In a case in 1984, the Supreme Court decided that the Fourth Amendment does apply to all state officials, including school officials (New Jersey v. T.L.O.). A student, T.L.O. (court uses initials in the case of minors), was caught smoking. She was taken to the principal's office, and the principal

demanded to see her purse to look for cigarettes. He also found rolling papers, marijuana, and other evidence of drug dealing. The Court upheld the search, saying it was reasonable under all the circumstances. This is a lower standard than probable cause, in order to balance the need of school officials to keep order and discipline with a student's right to privacy.

Another example of warrantless searches is police roadblocks, or "sobriety checkpoints." In roadblocks, the police stop all cars at a certain point in the road. They then ask the driver for license, registration, and perhaps other information. Roadblocks have become more common with the public concern for drunk driving. This practice has been approved in Maine courts and at the U.S. Supreme Court (Michigan Department of State Police v. Sitz, 1990).

A new twist on searches has happened recently. It deals with drug testing. The U.S. Supreme Court has approved drug testing without a warrant for certain federal employees. The Court said that random blood and urine testing of railroad employees after an accident was legal. The Court emphasized public safety concerns in that case. Later cases have required some special public safety interest related to the job for random drug testing. Courts try to balance the employer's interest in efficient workers, the state's interest in public safety, and the worker's right to privacy. Drug testing by public and private employers is consistently upheld when individual employees are suspected of drug use.

As each new case comes to trial, other exceptions may be made. It is often a confusing and tough decision for police. They need to be updated continually on the rules for search and seizure as those rules change.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment V, United States Constitution

In all criminal prosecutions, the accused . . . shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land.

Article I, Section 6, Maine Constitution

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof.

Article I, Section 6-A, Maine Constitution

No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offenses, as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger. . .

Article I, Section 7, Maine Constitution

No person, for the same offense, shall be twice put in jeopardy of life or limb.

Article I, Section 8, Maine Constitution

Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.

Article I, Section 21, Maine Constitution

In the United States a person is innocent until proven guilty. This means that the government must use due process (fair procedure) to prove that a person is guilty.

Some of the rights that make the criminal justice process fair are:

- You must be told the charges against you.
- You cannot be forced to admit you did anything wrong.
- You can have a lawyer to help defend you.
- You must have a public trial and can have your case decided by a jury.

The Fifth Amendment guarantees due process of law. The Fourteenth Amendment has a parallel clause which requires that states also treat their citizens in fundamentally fair ways. Many of the specific rights in the Bill of Rights have been "incorporated" in the concept of due process, because they have to do with fundamental fairness. The Maine constitution also has a due process clause.

One of the rights the Fifth Amendment gives to a person accused of a federal crime is the right to a grand jury indictment. This means that no person can be forced to stand trial in federal court unless a panel of citizens, known as the grand jury, finds there is enough evidence to bring the accused person to trial. This means the government alone does not have the power to bring a person to trial. The Maine constitution also provides the right to a grand jury indictment.

Another right protecting the innocent is called double jeopardy. It means that a person cannot be tried twice for the same crime. If the person is found not guilty, the government cannot try them again. If the person appeals (asks for a new trial), that is not double jeopardy. The defendant has asked to be tried again.

One of the best known parts of the Fifth Amendment is known as "taking the Fifth." A person has the right to remain silent and not incriminate him/herself. A defendant cannot be forced to testify against him/herself. The government must get its evidence from other sources unless the suspect gives evidence voluntarily. The government must be very careful that suspects know their rights.

One of the more famous cases involving the Fifth Amendment is Miranda v. Arizona. As a result of this case every police officer now must recite the " Miranda warnings" to anyone accused of a crime.

Miranda v. Arizona
384 U.S. 436 (1966)

Everyone is familiar with the scene of a police officer arresting a possible suspect. We have all seen it on television. After the arrest, the officer recites the Miranda's rights to the suspect:

- You have the right to remain silent.
- Anything you say can be used against you in court.
- You have the right to an attorney and to have the attorney present while you are being questioned.
- If you cannot afford an attorney, one will be appointed for you before any questioning begins.

Then the officer asks the suspect if he/she understands these rights. This Miranda warning was not always given to suspects. It is the direct result of the following case.

In 1960 Ernesto Miranda was suspected of kidnapping and raping a woman. He was arrested and taken to the police station. At the police station, the young woman identified Miranda as the person who had kidnapped and raped her. Miranda was taken to a room for questioning. He was not told that he could have a lawyer or that he could remain silent or that anything he said would be used in court.

Miranda confessed verbally and then signed a written statement. He was held for trial. He was found guilty and sentenced.

The case was appealed on the grounds that Miranda was not allowed to talk with a lawyer and that he did not understand that anything he said could be used against him in court. The appeal was denied at the state level and the case went to the U.S. Supreme Court.

The Supreme Court ruled in Miranda's favor. They said that Miranda did not know or understand his rights. His confession was not a voluntary one. This landmark decision means that voluntary confessions will not be considered unless the suspect has been warned of his/her rights. As a result, all police officers now carry cards outlining the Miranda warnings.

Ernesto Miranda was released and later arrested in 1974. He was returned to prison for violating his parole. He was released in 1975. Almost ten years after his landmark case before the Supreme Court, Miranda was stabbed to death in a bar fight. In his pockets were cards with the Miranda warning on them. He was selling the cards at the local courthouse to support himself.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VI, United States Constitution

In all criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at his election;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against him;

To have compulsory process for obtaining witnesses in his favor;

To have a speedy, public and impartial trial, and except in trials by martial law or impeachment, by a jury of the vicinity.

Article I, Section 6, Maine Constitution

The Sixth Amendment guarantees specific rights to persons accused of crimes to assure a fair trial. Accused persons have a right to a jury trial by a local jury, in public and without delay; to know the charges against them; to confront and cross-examine witnesses; and to be represented by a lawyer. This amendment protects the person accused of a crime against the power of the government.

The government has a lot of power to use against someone accused of a crime. The government charges, prosecutes, sentences, imprisons, fines, paroles and pardons. When criminal law is involved, the consequences to the individual can be costly.

The Sixth Amendment insists upon fairness for the accused person. It is a specific listing of guarantees. These guarantees insure a fair trial and that the person can get the help needed to defend against the charges.

The first guarantee of the Sixth Amendment is the right to a speedy and public trial. There cannot be a long delay in bringing the accused to trial. Public means that it must be done in full view of the public.

The accused is also assured of an impartial jury. That is, a jury with no connection to the case. The jury must also be a cross-section of the community.

The accused must be informed of the charges and be able to confront witnesses against him/her. Sometimes in cases where the witness is a government informant or in child abuse cases, the witness may be disguised or videotaped. This is done to protect the witness from harm.

Probably one of the most important guarantees of the Sixth Amendment is the right to have an attorney to represent a person accused of a crime. This right is mentioned in the Miranda warnings given to each person before they are arrested. If the accused cannot afford an attorney, one may be appointed by the court. This was not always true. The following case established that right.

Gideon v. Wainwright
372 U.S. 335 (1963)

Clarence Earl Gideon was a middle-aged, uneducated ex-convict and drifter. He was accused of breaking into a bar in a small Florida town in 1961. At his trial, Gideon asked for a lawyer. The judge said that Florida only allowed court appointed lawyers in capital (death penalty) cases. So Gideon had to defend himself at the trial. Gideon was found guilty and sentenced to five years in prison. While he was in prison, Gideon wrote to the Supreme Court, asking it to decide his case. He said he did not get a fair trial because he was too poor to hire a lawyer.

The Supreme Court decided to hear Gideon's case in 1963. All the Justices voted in favor of Gideon. They agreed that the states must provide free lawyers to all poor persons accused of a serious crime that could put them in prison. Because Gideon could not afford a lawyer, the U.S. Supreme Court appointed one for him. That lawyer was Abe Fortas who three years later was appointed to the Supreme Court by President Lyndon Johnson. When Gideon got a new trial, he was found innocent.

In its decision, the U. S. Supreme Court assured the appointment of an attorney whenever an accused person could not afford one.

The Gideon decision limited the right to an attorney in state courts to felony cases. But in 1972 the Supreme Court decided that a defendant also had a right to an attorney in misdemeanor cases.

In Escobedo v. Illinois (1964) it was established that an accused person has a right to have an attorney during police questioning. The right guaranteed in the Sixth Amendment is not limited to representation only at the trial, but provides for consultation before the trial.

One of the lawyers who represented Gideon stated, "In the future the name 'Gideon' will stand for the great principle that the poor are entitled to the same type of justice as are those who are able to afford counsel." That statement summarizes the crux of the Sixth Amendment.

Chapter Six Discussion Questions:

Given the rights guaranteed in the Fourth, Fifth and Sixth Amendments, do you think they are important? Why or why not?

Do you believe criminals have more rights than other people? Why or why not?

Develop arguments for both sides of the above question.

Chapter Seven

Mill Ordered To Stop Racial Abuse

On May 28, 1991, federal judge Gene Carter ordered the International Paper Company in Jay to stop racial harassment of its African-American workers.

Isom Harris, Willie Minor and Eddie Pugh were working at IP's Mobile, Alabama plant when workers at the Jay mill went on strike. The company recruited the three Alabama workers as permanent replacements in Jay.

For two years the men endured racial slurs and taunts at the mill. Some workers wore white hats and robes similar to the Ku Klux Klan. They pranced around the men's work stations. Racial graffiti appeared in bathrooms. Supervisors did little or nothing to stop the attacks. The company also did not train and promote the three men because of their race.

The men sued to stop the harassment and discrimination. Judge Carter ruled that the mill violated the Maine Human Rights Act. Carter ordered the mill to educate all workers about racial discrimination. The mill must also warn workers that racial harassment will be severely punished. A jury previously awarded the men money damages because of the company's discrimination in not promoting them.

Curtis Webber, an attorney for the men, said the ruling was a "complete vindication of the men's claims." Webber said the racial harassment has subsided. Workers "are not coming up to these people and openly making racially derogatory remarks the way they used to."

From Portland Press Herald, April 1, 1991, reported by Tess Nacelewicz

Fourteenth Amendment

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the rivileges or immunities of citizens of the United States; nor sall any state deprive any person of life, lib erty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Amendment XIV, Section I, United States Constitution

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof.
Article I, Section 6-A, Maine Constitution

Students will be able to:

- *explain due process.*
- *explain how the Fourteenth Amendment expanded the American citizen's rights.*
- *describe the protections of civil rights laws.*

VOCABULARY (Words are defined in the glossary):

confers	**clause**	**encompass**	**arbitrary**
naturalized	**incorporated**	**discrimination**	**retaliate**
mandatory	**abolished**		

The Fourteenth Amendment has been referred to as the "second Bill of Rights" or as Justice William Brennan said, "The Fourteenth Amendment gave Americans a brand new Constitution after the Civil War."

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The Fourteenth Amendment was one of three added to the Constitution after the Civil War. The Thirteenth Amendment abolished slavery; the Fourteenth Amendment gave state and federal citizenship to all persons born or naturalized in the United States irrespective of race; and the Fifteenth guaranteed to all the new citizens the right to vote.

Even though the Thirteenth Amendment abolished slavery, after the Civil War , many southern states passed laws called "Black Codes." These laws did not allow the freed slaves to vote, serve on juries, hold some jobs, move about freely, own firearms or gather in groups. To fix this discrimination, Congress passed the Fourteenth Amendment giving blacks citizenship and promising equal protection of the laws. Southern states had to ratify this amendment before they could reenter the union.

The Fourteenth Amendment confers (gives) state and federal citizenship to all persons born or naturalized in the United States. It also has two clauses which many people believe are among the most important in the Constitution. These clauses are the Due Process clause and the Equal Protection clause. These two clauses in the Fourteenth Amendment have provided most of the cases heard by the Supreme Court in the twentieth century.

Due Process

Due process means the government must be fair in its actions. The Fourteenth Amendment states that no state shall deprive any person of life, liberty or property without due process of law. The wording is similar to the Due Process clause in the Fifth Amendment. But the Fourteenth Amendment applies to the states and the Fifth applies to the national or federal government. Using the Due Process clause the Supreme Court has applied most of the rights guaranteed by the Bill of Rights to the states. These rights have been found essential to fundamental fairness or due process of law.

There are two types of due process — *procedural* and *substantive*. Procedural due process means that the way (or procedure) the laws are carried out must be fair. At a minimum, due process requires that a person must be given notice of what the government plans to do and a chance to be heard. Substantive due process means that the laws themselves (or the substance) must be fair. Laws cannot be arbitrary, vague, or too broad to know specifically what is prohibited.

The Fourteenth Amendment was not applied to the states immediately. It happened slowly as cases came to the Supreme Court. The Supreme Court would decide whether a right was important enough to be included in the due process of law. In a 1937 case the Court established a test to decide if a right should be incorporated in the concept of due process. The right had to be "fundamental and essential" to a "scheme of ordered liberty". Before applying the Bill of Rights to the states, there were two systems of justice

in America. The states could do things in criminal cases that the federal government could not do. After several Supreme Court cases, most of the rights dealing with criminal process were applied to the states.

There are some rights in the Bill of Rights that have not been incorporated. They are: Second Amendment right to keep and bear arms; Fifth Amendment right to a grand jury indictment; Seventh Amendment right to trial by jury in civil cases; Eighth Amendment prohibition of excessive bail and fines. These rights are not considered to be fundamental or essential enough to be included in the due process of law. Of course, states may include them in their own constitutions and many have.

Right to Privacy

Starting in the 1920's the Supreme Court began hearing cases dealing with personal liberties. In some of these cases the Supreme Court has protected rights not specifically listed in the Bill of Rights. Probably one of the most famous of these rights is the right to privacy. The Supreme Court ruled in 1973 in Roe v. Wade that the right to privacy was "founded in the Fourteenth Amendment concept of personal liberty" and was "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

Abortions are now legal in every state. However, the Supreme Court's decision did not end the debate nor settle every issue. In 1976 the Supreme Court ruled that a law requiring a woman to get her husband's consent for an abortion was unconstitutional. It also ruled that a law giving parents an absolute veto over an abortion sought by their minor daughter violated her right to privacy. However, in 1981 the Court upheld a law requiring doctors to notify the parents of a minor seeking an abortion. The Court has also ruled that states do not have to pay for abortions with public funds like Medicaid. This limits the abortion right for poor women.

In 1989, in Webster v. Reproductive Health Services, the Court upheld a Missouri law which prohibited abortions at state hospitals. The law also required that after a fetus is 20 weeks old, it must be tested to see if it can survive on its own before the abortion can be done. The Court, in its 5-4 decision, was careful to say it was not overturning Roe v. Wade. However, the Court signalled a change in its approach toward abortion cases. This has allowed the states greater freedom to regulate abortions. In a June 1992 split decision (Planned Parenthood v. Casey), the Supreme Court upheld part of the Pennsylvania law regulating abortions. But the Court also said that laws banning all or most abortions are unconstitutional. The Court applied a new analysis that asks whether a state abortion regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion.

In Rust v. Sullivan (1991), the U.S. Supreme Court upheld rules called a "gag order" by their critics. The rules say that doctors and clinics receiving family planning funds cannot counsel women about abortion. The Supreme Court, in a 5-4 decision, said the rules do not violate freedom of speech or a woman's right to an abortion. Many people are angry about the "gag order." Congress has considered changing the rules to allow abortion counseling but has not yet acted.

Equal Protection

The promise of equality given in the Fourteenth Amendment is one of our country's most ambitious goals. But what does equality mean? Does it mean equal result, equal treatment, equal opportunity - or something else? The courts have struggled to answer this question.

There may be a good reason for a law which treats people differently. For example, laws preventing speeding discriminate against speeders (or treat speeders differently from those not speeding). The state must show that this different treatment is reasonable and not arbitrary.

What if a law treats you differently because you are Asian -American, or a woman, or a Catholic? State laws or actions may be questioned if they involve a "suspect classification" (race, sex, alien status, religion, national origin) or affect a "fundamental right" (voting, education, free expression, travel). Then the state must show a "compelling interest" or very good reason for the law. When the Court reviews such a law, it uses this high standard to test the state's reasons for the law. If the law discriminates without meeting the test, it will be found unconstitutional. Some examples are segregation in schools and public facilities by race; laws prohibiting interracial marriage; licensing laws preventing women from practicing law; and residency requirements to be eligible for welfare.

The Fourteenth Amendment applies only to the states acting in governmental roles. It does not apply to private parties or actions having no connection to the state. There must be some state action before a court may act to remedy discrimination under the Constitution.

The Equal Protection clause of the Fourteenth Amendment addresses many types of discrimination. Racial and sex discrimination have received a lot of attention by the Supreme Court in this century. Starting in the early 1950's the Court decided many cases dealing with issues in both these areas. The Court has removed many barriers placed before a variety of groups. It has issued decisions with far reaching results — school desegregation, elimination of "separate but equal" laws, affirmative action policies, sex discrimination challenges and right to privacy issues.

The constitutional right to equal protection and due process guaranteed by the Fourteenth Amendment will continue to provide important cases dealing with the social issues of today.

Civil Rights Laws

The Fourteenth Amendment forbids discrimination by state and local governments. But before the 1960's, privately owned facilities like businesses, hotels, and restaurants could discriminate against anyone they wanted to. Discrimination was not against the law on private property.

Many groups wanted equal rights: African-Americans, women, disabled persons, older people, Latinos, Native Americans and other minority groups. They organized and demanded laws to give them equal rights. Because of this pressure for change, Congress started to pass civil rights laws in the 1960's, and continues to do so in the 1990's. These laws cover private businesses and employers as well as government. Major civil rights laws include:

- **Civil Rights Act of 1964** - provisions include:
  - Prohibits discrimination based on race, color, religion, or national origin in public accomodations (hotels, restaurants, movie theaters, sports arenas).
  - Prohibits discrimination in employment based on race, color, sex,religion, or national origin by businesses or by labor unions. (Commonly called *Title VII*.)
  - Permits employment discrimination based on religion, sex, or national origin if it is a necessary qualification for the job.
- **Equal Pay Act of 1963**
  - Requires equal pay for equal work, regardless of sex.
- **Voting Rights Act of 1965**
  - Bans literacy and "good character" tests as requirements for voting, which often discriminated against minorities.
  - Requires bilingual election materials for most voters who don't speak English.
- **Civil Rights Act of 1968**
  - Prohibits discrimination based on race, color, religion, or national origin in the sale, rental, or financing of most housing.

- **Age Discrimination in Employment Act of 1967**
  - Prohibits arbitrary age discrimination against people 40 years or older in employment.
  - Permits discrimination where age is a necessary qualification for the job.
- **Rehabilitation Act of 1973**
  - Prohibits government employers and private employers receiving federal funds from discriminating on the basis of physical handicap.
  - Prohibits activities and programs receiving federal funds from excluding otherwise qualified handicapped people fromparticipation or benefits.
- **Americans with Disabilities Act of 1990**
  - Prohibits discrimination in employment against a qualified person with a disability because of the disability.
  - Requires employers to make "reasonable accomodation" of a qualified person's disability.
  - Prohibits discrimination because of disability in public transportation.
  - Prohibits discrimination because of disability in public services, programs and activities of government agencies.

States and local governments can also pass civil rights laws. Maine has passed a sexual harassment law, part of the Maine Human Rights Act. The law prohibits anyone from harassing you on the job. This means giving someone unwanted sexual attention. It is usually repeated behavior, but it could be one serious incident. Harassment may include :

- deliberate touching, pinching, caressing
- attempts to fondle or kiss
- pressure for dates or sex
- requests for sex in exchange for promotions or grades
- use of sexually offensive language
- jokes, teasing, staring, or demeaning remarks

Employers must have sexual harassment policies, and a complaint procedure for victims. Victims may also file complaints with the Maine Human Rights Commission in Augusta. The employer cannot fire you or retaliate in any way for complaining. Larger employers must also train all their new employees about sexual harassment.

These laws are enforced by government agencies and by persons bringing private lawsuits. They expand the rights guaranteed by the Constitution, the Bill of Rights, and the Fourteenth Amendment.

Affirmative Action

As Americans, we are still dealing with this country's history of race discrimination in light of the guarantee of equal protection. Today, the government faces a dilemma. To help those harmed by racial injustice may mean giving them special treatment. This is the dilemma of affirmative action. Affirmative action programs are special programs to help women and minorities. These groups have historically been denied equal opportunities. Affirmative action programs are most often found in employment and education. For example, a business might take affirmative action by starting a program to recruit, hire and train more women and minorities.

Affirmative action programs can be either voluntary or mandatory. Sometimes the government or the courts order affirmative action as a remedy for past discrimination.

Not everyone agrees with affirmative action programs. Some argue that special treatment for some means discrimination against others. One man who disagreed was Alan Bakke. Bakke, a white male, had good grades but was denied admission to medical school. Some minority students who were admitted had poorer grades than Bakke. The school, a state university, saved 16 of every 100 places for minority students .

Bakke said saving places for minorities was unfair to him. He said this was reverse discrimination against whites. He sued, saying the special program denied him equal protection of the laws. Bakke's case went to the Supreme Court in 1978 (Regents v. Bakke). The Court said that *quotas*, saving places for women or minorities, were unconstitutional. The Court ordered Bakke admitted to the university. However, the Court also said that schools and businesses can consider race and sex as one reason to take persons from groups that have suffered past discrimination.

The Bakke case left many questions unanswered. Cases involving affirmative action continue to come before the court. Recent decisions have limited affirmative action programs. Other decisions have made it harder for workers to prove discrimination on the job under the civil rights laws. At the same time, Congress, states, and cities are passing more civil rights laws. The goal of true equality for all will continue to be a controversial subject into the 1990's and beyond.

Chapter Seven Discussion Questions:

Why do you think the Fourteenth Amendment is called the "second Bill of Rights?"

Choose one area in your life that has been greatly influenced by the Fourteenth Amendment.

Do you agree or disagree with affirmative action? Explain.

Glossary

abolish - to put an end to; as abolish slavery

abridge - to cut short or take away from

absolute - unquestionable; having no restriction

amendment - change, improvement; a change in the U.S. or State Constitution

appellate - concerned with an appeal, as in appellate court which reviews lower court decisions

applicable - appropriate, relevant

aquit - accused party is found not guilty

arbitrary - unreasonable

bear - to own or to keep

clause - a separate section

collective right - rights belonging to the group

confer - to give

constitutional - related to the constitution; often used to mean legal under the constitution

controversial - marked by opposing views

desecrate - damage or physically mistreat; to offend

discrimination - difference in treatment often based on prejudice

document - a written paper containing a record or statement

drafters - writers

due process - requirement that government be fair in its actions; at a minimum, notice of the charges and a chance to be heard

procedural due process - way the laws are carried out must be fair

substantive due process - laws themselves must be fair

encompass - to include

equal protection of the laws - protection from unreasonable discrimination

exclusionary rule - no evidence seized illegally may be used in court to convict the person of a crime

felon - someone who commits a felony

felony - a serious crime with possible punishment of imprisonment for more than a year

fundamental rights - basic rights; could also be called natural rights

Habeas Corpus - "having the body;" requires any official who holds someone in custody to give the court a reason why that person should continue to be held; designed to prevent illegal arrests and imprisonment; often used to review convictions when appeals have run out

impartial - not biased, treating all equally

incorporation - process of including fundamental and essential rights in the concept of due process of law; used to apply many rights in the Bill of Rights to the states under the Fourteenth Amendment

incriminate- to be involved in a crime

indictment - a Grand Jury's formal charge or accusation of a crime

individual right - rights belonging to the individual

infringe - to intrude or trespass on a right or privilege

interpret - to explain

jeopardy - danger, especially the danger an accused person is subjected to when on trial for a criminal offense

jurisdiction - limits where authority may be used

libel - a written statement about a person that is false and damages that person's reputation

mandatory - required

militia - same as the National Guard today

naturalized - to admit to citizenship

obscene - repulsive; disgusting to the senses, with no redeeming social value

petition - ask; a request to a public official or a court

principle - basic law or assumption

probable cause - a reasonable belief, known personally or through reliable sources, that a person has committed a crime

prohibit - ban

randomly - haphazardly; no definite path or purpose

ratify - approve

redress - to make right

regulation - rule

search warrant - a court order which gives police the power to search and seize items related to a crime

self-incrimination - giving evidence or answering questions which may lead to criminal prosecution

standing armies - regular or permanent armies

statute - a law passed by a legislature

symbolic - a representation

symbolic speech - symbols, such as flags, arm bands or draft cards, which represent an idea which is protected as free speech, often used in demonstrations. Occasionally, the courts use the term "pure speech" interchangeably with symbolic speech.

warrant - authorization; paper that authorizes a person to do something such as arrest, search, etc.

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Educational Materials for Instruction on Bill of Rights

*The Center for Research and Development in Law-Related Education (CRADLE) has published a catalogue listing 1300 teacher-written lesson plans on the Bill of Rights. There are also 67 other resource materials produced by other organizations. Copies of "National Repository Catalog of Teacher-Developed Lesson Plans on Law and the Constitution" are available for a fee from: CRADLE, Wake Forest University School of Law, P.O. Box 7206, Reynolda Station, Winston-Salem, NC 27109; telephone 1-800-437-1054 or 919-759-5872.

*The American Bar Association publishes a free catalogue of Bill of Rights teaching resources. Contact Tammy Russo, A.B.A., Division for Public Education, 541 North Fairbanks Court, Chicago, IL 60611-3314; telephone 312-988-5745.

*"Resources for Teachers on the Bill of Rights," by the ERIC Clearinghouse for Social Studies/Social Science Education, contains a bibliography and directory of national and state organiztions promoting teaching about the Constitution. It also contains sample lessons on the Bill of Rights, reprints of key historical documents, background papers on the subject and a Bill of Rights chronology. The guide is $15 per copy plus $2 for shipping and handling from Publications Manager, Social Studies Development Center, Indiana University, 2805 East 10th St., Suite 120, Bloomington, IN 47408.

*The American Civil Liberties Union has a directory of briefing papers, books, pamphlets and posters on lawsuits that involved the Bill of Rights. The address is 132 West 43rd St., New York, NY 10036; telephone 212-944-9800, ext. 607.

* A catalogue of publications about the Bill of Rights is available from the American Historical Association at 400 A St. S.E., Washington , DC 20003; telephone 202-544-2422.

*"Right in History" available from National History Day, 11201 Euclid Ave., Cleveland, Ohio 44106; telephone 216-421-8803.

*Maine Court Orientation Tape on Jury System - available at USM Law Library and county courts.